



*United States. Congress. House.
Committee on Interstate and Foreign
Commerce Subcommittee on Transportation
and Aeronautics*
Part I

NORTHEAST RAIL TRANSPORTATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON

TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

✓ H.R. 6591, H.R. 4897, H.R. 5822, H.R. 5385, H.R. 6880, ✓
H.R. 7373, and H.J. Res. 50 ✓

LEGISLATIVE PROPOSALS DESIGNED TO ALLEVIATE THE
PROBLEMS IN RAILROAD TRANSPORTATION IN THE NORTH-
EASTERN UNITED STATES, AND RELATED MATTERS

APRIL 16, 17; MAY 8, 9, 10, 21, 30, 31; JUNE 6 AND 7, 1973

Serial No. 93-30

Printed for the use of the
Committee on Interstate and Foreign Commerce



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ORGANIZATIONS REPRESENTED AT HEARINGS

American Iron & Steel Institute:

Emory, Wayne, attorney, United States Steel Corp.
 Gross, John E., chairman, traffic committee, AISI, and general traffic manager, Inland Steel Co.

Miller, Paul, attorney, Bethlehem Steel Co.

Association of American Railroads:

Ailes, Stephen, president.
 Lang, A. Scheffer, director of special studies.

Brotherhood of Maintenance of Way Employees:

Crotty, Harold, president.
 McGlaughlin, J. Raymond, national legislative representative.
 Schoene, Lester P., general counsel.

Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employees, AFL-CIO:

Dennis, L. E., executive director.
 Kennedy, James J., national legislative counsel.
 Mahoney, William, counsel.

Connecticut Department of Transportation:

Kanell, Samuel, counsel.
 Pease, F. Colin, deputy commissioner.

Forest Industries Council:

McGrath, Joseph, vice president for government affairs, National Forest Products Association.
 Olson, Roy E., director of transportation and distribution, American Paper Institute.
 Walsh, Michael J., Jr., vice president, St. Regis Paper Co., and chairman, transportation committee, Forest Industries Council.

Interstate Commerce Commission:

Brooks, Robert J., Associate Director, Office of Proceedings.
 Chandler, George M., Staff Director, Northeastern Railroad Project.
 Grady, John A., Director, Bureau of Accounts.
 Stafford, Hon. George M., Chairman.

Lehigh & Hudson River Railway Co.:

Moore, William Gifford, president and general manager.
 Troiana, John G., trustee.

Lehigh Valley Railroad Co.:

Nash, John F., trustee and chief operating officer.
 Smith, Thomas J., administrative vice president.

National Association of Railroad Passengers, Anthony Haswell, chairman.

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Jewell, David, director of public relations.

Rodgers, Paul, general counsel.

Penn Central Co.:

Berger, David, special counsel for reorganization.

Sharfsin, Joseph, member, board of directors.

Turner, C. Roger, vice president.

Penn Central Transportation Co.:

Baker, George P., trustee.

Blanchette, Robert W., counsel to the trustees.

Horsky, Charles A., special counsel to the trustees.

Langdon, Jervis, Jr., trustee.

Moore, William H., president.

Reading Co.:

Dilworth, Richardson, trustee.

Hesse, William, vice president (law).

Lewis, Andrew L., trustee.

Transportation Department:

Barnum, John, General Counsel.

Brinegar, Hon. Claude S., Secretary.

Hall, Asaph, Special Assistant to the Secretary.

Ingram, John W., Administrator, Federal Railroad Administration.

United Transportation Union:

Friedman, Edward, counsel.

Snyder, J. R., national legislative director.

Wilson, W. R., alternate legislative director.

NORTHEAST RAIL TRANSPORTATION

MONDAY, APRIL 16, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John Jarman [chairman] presiding.

Mr. JARMAN. The subcommittee will please be in order.

Today, this subcommittee opens hearings on legislative proposals designed to alleviate the crises in rail transportation in the Northeast United States, with particular emphasis on the problems related to the bankruptcy of the Penn Central Railroad.

The Chair can not overly emphasize the urgency of the situation at hand, and the magnitude of the problem to the entire Nation. On the other hand, this subcommittee will want to move cautiously, in order that we produce constructive legislation which will not compound the problems involved. The Chair does not believe it will serve the public interest for us to use band aid approaches to the current crises, and it is our hope that we can develop some long-range legislative solutions which will promote the orderly economic progress of rail transportation throughout the Nation, as well as a solution to the current problem in the Northeast. It appears to many of us that each successive Congress inherits portions of the long festering problems relating to rail transportation, and it is incumbent upon us to try to formulate some workable blueprint in our legislative efforts which will have a more lasting and productive effect.

As we all know this is a very complex problem, and we have a multitude of bills which have been introduced on the subject. We want to be fair to all concerned—the stockholders of the bankrupt railroads, the shippers and users of the lines, the public and the communities served by the railroads, the employees of the companies involved—but just as important, the American taxpayer, who after all, has a very large stake in whatever we decide to do.

This committee must have, and expects to receive, the cooperation of all parties concerned in these deliberations. This includes the management of the railroads, the trustees of the bankrupt lines, the labor unions representing the rail employees, the Federal judiciary involved in the litigation and proceedings of the bankrupt lines, the administration and the independent agencies of the Federal Government charged with the regulation of rail transportation. This is a problem national in scope, despite the current emphasis on the

Northeast sector of the Nation, and we must have a spirit of harmony by all affected parties in order to arrive at a just and equitable solution.

I believe the members of this subcommittee are well acquainted with the history of the problems we are considering, and the Chair need not recount them. We should focus on what we can do for the future rather than the mistakes which led us to the present.

We have scheduled hearings for today, Tuesday, and Thursday of this week, before the House recesses for the Easter vacation. On Tuesday, we will have the Secretary of Transportation. On Thursday, we will have the trustees of the Penn Central Railroad.¹

Without objection, the text of the bills we will be considering during these hearings and the agency reports thereon will be placed in the record at this point.

[Testimony resumes on p. 169.]

[The text of the bills and agency reports thereon follow:]

¹ The appearance of the trustees of the Penn Central Railroad was postponed and subsequently rescheduled for May 8, 1973.

93d CONGRESS
1st Session

H. R. 6591

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 1973

Mr. STAGGERS (for himself and Mr. DEVINE) (by request) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To designate a network of essential rail lines; to require minimum standards of maintenance on such lines; to provide financial assistance for rehabilitation of rail lines; and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Federal-Aid Railroad Act
- 4 of 1973".

1 TITLE I—FINDINGS, PURPOSES, AND

2 DEFINITIONS

3 CONGRESSIONAL FINDINGS AND DECLARATION OF

4 PURPOSE

5 SEC. 101. The Congress finds that modern, efficient rail
6 service is essential to interstate commerce and to national
7 defense; that utilization of existing rail rights-of-way offers
8 economic environmental advantages in terms of land use,
9 air pollution, noise levels, and energy conservation; that
10 railroad tracks and roadbeds have greatly deteriorated in
11 recent years, especially in the Northeast section of the coun-
12 try, resulting in slow orders and derailments; that such de-
13 terioration in plant and facilities has resulted in inferior rail-
14 road transportation for both freight and passengers, and the
15 consequent diversion of traffic to other modes of transporta-
16 tion; that rehabilitation of such tracks and roadbeds will
17 provide substantial public benefits through improved rail
18 freight and passenger service; that the efficiency and quality
19 of railroad service and the economic utilization of the railroad
20 plant in the Northeast can be improved by coordination and
21 joint use by rail carriers of lines they do not own; that these
22 measures will be of material assistance in restoring viability
23 to private rail operations in the Northeast; and that to assure
24 preservation of essential rail services it is necessary to desig-
25 nate a Federal-aid railroad system; to require minimum

1 standards on the rail lines comprising such system; to re-
2 habilitate, maintain, and modernize rail lines in the North-
3 east; to establish rights of access by rail carriers to the rail
4 lines comprising such system; and to provide Federal
5 financial assistance for rehabilitation, maintenance, and
6 modernization of essential rail lines.

7 The Congress further finds that an emergency exists,
8 particularly in the Northeast region, which threatens the
9 continuation of adequate railroad service; that much of the
10 railroad service in such region is performed by railroads in
11 reorganization and that their continued operation is vital to
12 the economic well-being of not only the Northeast region but
13 also of the Nation; that such railroads may be unable to
14 continue to provide such services without unduly impairing
15 the rights of their creditors; that certain reorganization courts
16 have under consideration preserving the debtors' estates by
17 ordering the liquidation of the railroads in reorganization
18 subject to their jurisdictions; and that the preservation of
19 adequate railroad transportation in the Northeast region for
20 the immediate future can be met only by emergency mea-
21 sures providing for the continuation of essential railroad
22 services by railroads in reorganization and by the restruc-
23 turing of all railroad services in the Northeast region in
24 such a way as to assure the continuation of essential services
25 in an efficient and profitable manner under private manage-

1 ment, thereby facilitating the reorganization of the affected
2 rail carriers.

3 **DEFINITIONS**

4 **SEC. 102.** For the purposes of this Act the term—

5 (1) “automatic block signals” includes automatic
6 train stop systems, automatic train control systems, au-
7 tomatic cab signal systems, and any system of cen-
8 tralized traffic control by which a train is operated in
9 accordance with signal indications without train orders;

10 (2) “Commission” means the Interstate Com-
11 merce Commission;

12 (3) “lessor railroad” means a railroad in reorga-
13 nization the lines and other transportation properties of
14 which have been leased to the United States pursuant to
15 section 201 of this Act;

16 (4) “main line” means all rail line equipped with
17 two or more tracks (other than passing or side tracks)
18 or equipped with automatic signals;

19 (5) “Northeast region” means the States of Maine,
20 New Hampshire, Vermont, Massachusetts, Connecticut,
21 Rhode Island, New York, New Jersey, Pennsylvania,
22 Delaware, Maryland, Virginia, West Virginia, Ohio,
23 Indiana, Michigan, and Illinois; the District of Columbia;
24 and those portions of contiguous States in which are

5

1 located facilities owned or operated by railroads in reorga-
2 nization;

3 (6) "rail carrier" includes all common carriers by
4 railroad subject to the provisions of the Interstate Com-
5 merce Act (49 U.S.C. 1 et seq.) ;

6 (7) "rail line" includes main rail track or tracks;
7 side track and yard tracks adjacent to such main tracks;
8 classification yards; station and terminal tracks and
9 facilities; the roadbed supporting such tracks; signaling,
10 communication, and power transmission structures and
11 devices as are permanently installed on or adjacent to
12 such tracks and roadbed; bridges, culverts, fills, tunnels,
13 and other structures occupied by such tracks and road-
14 bed; real estate occupied by such tracks and roadbed;
15 and real estate adjacent to such tracks and roadbed which
16 is used for drainage of, maintenance of, access to, and
17 protection of such tracks and roadbed; but does not in-
18 clude any structures and devices other than those specified
19 in this paragraph;

20 (8) "railroad in reorganization" means a debtor
21 railroad in reorganization under section 77 of the Bank-
22 ruptcy Act (11 U.S.C. 205) on the date of enactment
23 of this Act;

24 (9) "Secretary" means the Secretary of Transporta-
25 tion; and

1 (10) "System" means the Federal-aid Railroad
2 System established by this Act.

3 **TITLE II—INTERIM AND EMERGENCY**
4 **MEASURES**

5 **LEASE OF RAIL PROPERTIES TO THE UNITED STATES**

6 SEC. 201. (a) Within ninety days after enactment of
7 this Act, the trustee or trustees of any railroad in reorgani-
8 zation, the majority of whose lines are located in the North-
9 east region, all owners of rail lines leased to such railroad,
10 whether ratified or affirmed or not, and all wholly owned
11 subsidiaries and affiliates of such railroad, upon authorization
12 therefor from the reorganization court, may tender all lines
13 and other transportation properties, assets, and interests of
14 such companies to the United States for lease by the United
15 States for a term not to exceed three years. The trustees
16 or companies making such tender shall at the same time
17 agree to the operation of such properties, assets, and interests
18 so tendered and to all other terms and conditions of this title.
19 Within thirty days of the receipt of such tender, the United
20 States shall execute a lease agreement, and shall concurrently
21 execute an operating agreement with the trustees or com-
22 panies making such tender, and the operating agreement shall
23 be executed by such trustees or companies as of the same
24 date.

25 (b) As consideration for leasing the lines and other

1 transportation properties, assets, and interests tendered for
2 lease under this section, and for their operation by the
3 lessor, the United States shall pay to the lessors an amount
4 to be negotiated between the trustee or trustees of the
5 railroad in reorganization and the Commission, which
6 amount shall be the least amount necessary to protect the
7 interests of the creditors of such railroad during the period
8 such lease is in effect and to carry out the other purposes
9 of this title. The amount paid by the United States under
10 this subsection shall be no more than the sum of (1) the
11 net loss suffered by such railroad, excluding accrual for
12 taxes and fixed charges deferred by the reorganization court,
13 and excluding also depreciation expenses and extraordinary
14 items unless approved by the Commission, (2) payments
15 to meet equipment obligations, (3) any "buy-in" fee owing
16 under the Rail Passenger Service Act of 1970 (45 U.S.C.
17 501 et seq.), and (4) capital expenditures as may be ap-
18 proved by the Commission as part of a restructuring plan
19 adopted by the Commission under this title. During the
20 period of such lease there shall be no further accrual of
21 real estate or other taxes imposed by States or their subdivi-
22 sions upon the lines and other transportation properties, as-
23 sets, and interests of the lessor railroad leased to the United
24 States. Accounting terms used in this subsection shall be

1 defined as in the Commission's Uniform System of Ac-
2 counts for Railroad Companies.

3 (c) Any tender by a railroad in reorganization of the
4 lines and other transportation property, assets, and interests
5 for lease by the United States shall be made to the Commis-
6 sion, and any lease and operating agreement shall be ex-
7 ecuted by the Chairman of the Commission for the United
8 States and shall be in such form and subject to such reason-
9 able terms and conditions as the Commission shall prescribe.

10 (d) The lease and operating agreement shall terminate
11 upon the discharge of the lessor railroad from reorganization
12 proceedings under the Bankruptcy Laws or at the expiration
13 of three years from the date of execution of the lease and
14 operating agreement, whichever is the earlier, unless termi-
15 nated before then by mutual consent of the lessor railroad and
16 the United States.

17 (e) While the lease and operating agreement is in
18 effect, the Commission shall be authorized to take whatever
19 steps it deems necessary to protect the interests of the United
20 States to the extent possible while maintaining and pre-
21 serving railroad transportation services found to be essential
22 to the public convenience and necessity. Among other things,
23 the Commission may require prior approval by itself or by
24 designated employees or agents of any expenditure or class of
25 expenditure by the lessor railroad; it may require perform-

1 ance of such maintenance as it finds necessary to preserve
2 the estate of the lessor railroad, to protect the rights of its
3 creditors, and to assure the continuation of reasonably ade-
4 quate rail transportation service; it may place upon the
5 lessor railroads' premises agents or employees to supervise
6 the operations and accounting and financial practices of such
7 railroad; and it may require the lessor railroad, at its own
8 expense, to carry out such engineering, economic, and other
9 studies as may be necessary to expedite and facilitate the
10 restructuring of the lessor railroad's operations so as to
11 preserve essential railroad services and to achieve a prompt
12 and successful reorganization of the lessor railroad.

13 (f) At the expiration of the lease and operating agree-
14 ment, a final audit of the amount paid thereunder shall be
15 made by independent auditors, subject to review by the
16 Commission, and the lessor railroad shall make payment to
17 the United States in an amount equal to the amount paid to
18 it under the lease and operating agreement, or shall issue to
19 the United States debentures, in such form and subject to
20 such terms and conditions as the Commission shall prescribe,
21 in the face value of such amount. Such debentures shall
22 mature twenty years from the date of issue, shall be subor-
23 dinated to other securities or claims against the lessor rail-
24 road's estate outstanding at the date of their issuance, and

1 shall bear interest at the rate of 3 per centum per year for
2 the first five years and at the rate of 6 per centum per year
3 thereafter. Such debentures may be repurchased by the lessor
4 railroad for their face value at any time, and may be sold
5 by the United States on such terms as the Secretary of the
6 Treasury may prescribe, subject to the repurchase rights of
7 the lessor railroad.

8 INVESTIGATION AND RESTRUCTURING

9 SEC. 202. (a) Within thirty days after the execution of
10 a lease and operating agreement, as provided in this title, the
11 Commission shall enter into an investigation of the railroad
12 service performed by the lessor railroad; whereupon the
13 Commission may direct all railroads in the area served by
14 the lessor railroad, including the lessor railroad, and other
15 interested parties, to submit within thirty days, unless such
16 period is extended by the Commission, recommendations
17 indicating steps deemed prudent to preserve essential services
18 performed by the lessor railroad and to eliminate or reduce
19 operating losses of the lessor railroad, including possible plans
20 for restructuring railroad service in the area served by the
21 lessor railroad.

22 (b) The Commission, upon the terms and conditions
23 prescribed by it and consistent with the provisions of this
24 title, may declare, upon its own motion or upon petition,
25 that certain service performed by a railroad in reorganization

1 is threatened because such railroad may be compelled to sus-
2 pend operations; whereupon the Commission may enter into
3 an investigation of the railroad service performed by such
4 railroad and direct all railroads in the area served by it,
5 including the railroad in reorganization, and other interested
6 parties, to submit within thirty days, unless such period is
7 extended by the Commission, recommendations indicating
8 steps deemed prudent to preserve essential services per-
9 formed by such railroad and to eliminate or reduce operating
10 losses of such railroad, including possible plans for restructur-
11 ing railroad service in the area served by such railroad.

12 (c) Upon consideration of the recommendations sub-
13 mitted, and other information available to it, the Commission
14 may adopt a plan which may (1) immediately permit, or
15 in the case of a lessor railroad direct, a railroad or railroads
16 in the area served by the lessor railroad or other railroad
17 in reorganization, including the lessor railroad or such other
18 railroad, to restructure their railroad service, which plan may
19 permit or require, if found feasible, the joint use of the most
20 economical railroad lines and terminals at a fair compensa-
21 tion, the abandonment of operations of lines, terminals, or
22 other facilities which are not found to be essential to the
23 public convenience and necessity, and the lease of facilities
24 and equipment or the granting of trackage rights of essential
25 railroad tracks and facilities of the lessor railroad or such

1 other railroad, at a fair compensation to another railroad or
2 railroads in the area, and (2) after hearings as set forth in
3 this title may permit or direct the abandonment of lines, ter-
4 minals, or other operations or facilities and the sale, lease or
5 operation of essential railroad properties of the lessor railroad
6 or such other railroad and purchase, lease, or operation there-
7 of by another railroad or railroads at a fair compensation and
8 on reasonable terms. The emergency restructuring plan re-
9 flecting actions taken under this subsection shall become
10 effective within thirty days after such order is served, unless
11 such time is extended by the Commission, without the neces-
12 sity of awaiting final determination of appeal on reconsidera-
13 tion to the Commission as provided in this title.

14 **MATTERS TO BE CONSIDERED BY THE COMMISSION**

15 **SEC. 203.** In adopting a plan of restructuring, the Com-
16 mission shall give consideration to—

17 (1) the effect cessation of railroad service would
18 have on industries and employment in the area involved;

19 (2) the interest of the United States, under any
20 lease and operating agreement executed pursuant to this
21 title, in reducing or eliminating the operating losses of
22 a lessor railroad;

23 (3) the ability and willingness of State and local
24 governments and users of railroad service to share in

1 meeting the costs of sustaining railroad service that can-
2 not be operated profitably;

3 (4) the availability of alternate transportation; and

4 (5) any plans which Federal, State or local gov-
5 ernmental agencies may have looking toward the short-
6 or long-term restructuring or rehabilitation of railroad
7 services in the area served by the lessor railroad or other
8 railroad in reorganization.

9 LEASE OR PURCHASE PRICE

10 SEC. 204. In any plan of restructuring which involves
11 the lease or sale of essential railroad properties of a lessor
12 railroad or a railroad in reorganization to another railroad or
13 railroads, the Commission, after hearing, under section 206
14 of this title, shall set the fair lease or purchase price, unless
15 agreed upon by the parties involved. The plan of restructur-
16 ing shall not require sale or purchase of property without the
17 consent of the parties.

18 INTERIM FINDINGS

19 SEC. 205. In order to permit early implementation of a
20 plan of restructuring as provided in this title, so as to achieve
21 the purposes of this title, the plan of restructuring may pro-
22 vide for interim findings with respect to property rights af-
23 fected or may defer consideration of property rights until
24 after oral hearing as set forth in section 206.

2 SEC. 206. After a plan of restructuring is adopted, all
3 interested parties shall have an opportunity to present their
4 views and comments in favor of or in opposition to such
5 plan, and the Commission may, during such pending proceed-
6 ings or within one year after the conclusion thereof, order
7 such further changes, consistent with this title, and subject
8 to such hearings as it shall conclude are desirable to improve
9 such plan of restructuring, including the lease of the facilities
10 of the lessor railroad or other railroad to, or their operation
11 by, another railroad or railroads, and the fair price of such
12 lease or contract to operate or the fair compensation for joint
13 use of railroad lines and terminals if not agreed to by the
14 parties, and shall set such other conditions as it deems neces-
15 sary to assure that the plan of restructuring is carried out. The
16 fair lease or purchase price for essential lines, terminals, and
17 other properties of a lessor railroad or a railroad in reorganiza-
18 tion conveyed in accordance with a plan of restructuring
19 shall be no less than is required by section 77 of the Bank-
20 ruptcy Act and shall be subject to review by the reorganiza-
21 tion court.

23 SEC. 207. (a) Any plan of restructuring adopted by the
24 Commission under this title shall provide for the protection
25 of the railroad employees affected.

1 (b) During the period that a lease and operating agree-
2 ment executed pursuant to this title is in effect, no change in
3 the condition of employment of employees subject to the
4 Railway Labor Act (45 U.S.C. 151 et seq.) shall be made,
5 except by agreement, by a lessor railroad or its employees.

6 (c) No lessor railroad shall contract out any project for
7 rehabilitation or maintenance work performed, during the
8 period that a lease and operating agreement executed pur-
9 suant to this title is in effect, of a value of over \$450 per
10 month in labor and materials which is normally performed
11 by employees in any bargaining unit covered by a labor
12 agreement between such railroad and any organization.

13 (d) Lessor railroads shall take such action as may be
14 necessary to insure that all laborers and mechanics employed
15 by contractors and subcontractors in the performance of con-
16 struction work performed during the period that a lease and
17 operating agreement executed pursuant to this title is in
18 effect shall be paid wages at rates not less than those prevail-
19 ing on similar construction in the locality as determined by
20 the Secretary of Labor in accordance with the Davis-Bacon
21 Act (40 U.S.C. 267a-276a-5). No one shall enter into any
22 construction contract or agreement without first obtaining
23 adequate assurance that required labor standards will be
24 maintained on the construction work. Health and safety
25 standards promulgated by the Secretary of Labor pursuant

1 to section 107 of the Contract Work Hours and Safety Stand-
2 ards Act (40 U.S.C. 333) shall be applicable to all con-
3 struction work performed under such contracts or agree-
4 ments, except any construction work performed by an em-
5 ployee of the Corporation or of a railroad company. Wage
6 rates provided for in collective bargaining agreements nego-
7 tiated under and pursuant to the Railway Labor Act shall
8 be considered as being in compliance with the Davis-Bacon
9 Act.

10 **PENALTIES**

11 **SEC. 208.** The willful failure or refusal of any carrier or
12 subsidiary, affiliate, or holding company, or of any officer or
13 employee of any carrier, subsidiary, or holding company, to
14 comply with the terms of any order of the Commission pur-
15 suant to this title shall be a misdemeanor, and upon convic-
16 tion thereof the carrier, subsidiary, affiliate, or holding com-
17 pany, or person offending shall be subject to a fine of not less
18 than \$1,000 or more than \$5,000 for each offense, and each
19 day during which such party shall willfully fail or refuse to
20 comply with the terms of such order shall constitute a separate
21 offense. It shall be the duty of the Attorney General of the
22 United States to prosecute all necessary proceedings for the
23 enforcement of the provisions of this title and for punishment
24 of all violations thereof upon application by the Commission.

1 PREEMPTION AND ANTITRUST IMMUNITY

2 SEC. 209. The provisions of this title shall preempt the
3 provisions of the Interstate Commerce Act and of section 77
4 of the Bankruptcy Act and action taken pursuant thereto shall
5 not be subject to the antitrust laws as defined in section 5a of
6 the Interstate Commerce Act (49 U.S.C. 5b).

7 SERVICES OF OTHER AGENCIES

8 SEC. 210. The Commission may use available services
9 and facilities of other departments, agencies, and instrumen-
10 talities of the Government, with their consent, on a rein-
11 burable basis. Departments, agencies, and instrumentalities
12 of the Government shall exercise their powers, duties, and
13 functions in such manner as will assist in carrying out the
14 objectives of this title.

15 APPROPRIATIONS

16 SEC. 211. (a) Payments required to be made by the
17 United States as a consequence of any lease and operating
18 agreement executed pursuant to this title shall be made by the
19 Secretary of the Treasury from funds hereby authorized to be
20 appropriated in such amounts that may be necessary for the
21 purpose of carrying out the provisions of this title.

22 (b) There is hereby authorized to be appropriated to the
23 Commission such sums as may be necessary for administra-
24 tive expenses under this title, but not to exceed \$5,000,000
25 in any one fiscal year.

1 **TITLE III—THE FEDERAL-AID RAILROAD**
2 **SYSTEM**

3 **INITIAL DESIGNATION OF THE SYSTEM**

4 SEC. 301. The Federal-aid railroad system shall consist
5 initially of those main lines, yards, and terminals, located in
6 the Northeast region and operated by domestic railroad com-
7 panies, found by the Commission to be essential to the
8 present and future public convenience and necessity and best
9 suited for inclusion of an integrated system of main line,
10 yard, and terminal facilities capable of meeting the needs of
11 commerce of the United States and the national defense. In
12 determining which main lines, yards, and terminals should
13 be included on the Federal-aid railroad system, the Commis-
14 sion shall take into consideration the interests of the persons,
15 communities, States, and regions affected thereby; the existing
16 pattern of service by railroads and alternative modes; present
17 and projected future economic and population patterns; and
18 the public interest in a privately operated, balanced, inte-
19 grated, competitive, and economical transportation system
20 responsive to the needs of the public and the users of such
21 system. To the extent consistent with the purposes of this
22 Act, the Commission shall not designate as part of the sys-
23 tem rail lines which are parallel to, and duplicative of, other
24 lines included on the system. The designation of additional
25 regions within which railroad main lines, yards, and termi-

1 nals shall be deemed eligible for consideration for inclusion
2 on the Federal-aid railroad system shall be made only by
3 the Congress.

4 PROCEDURE FOR MAKING FINAL DESIGNATION

5 SEC. 302. Within one hundred and twenty days after the
6 enactment of this Act, any railroad company or railroad
7 companies jointly may file with the Commission an appli-
8 cation seeking the designation of any main line, yard, or
9 terminal operated by it or them, and located in the North-
10 east region, as part of the system. Applications shall be in
11 such form, and shall contain such information, as the Com-
12 mission shall prescribe. Within one hundred and eighty days
13 after the enactment of this Act, the Commission shall issue
14 and make public its tentative findings as to those main lines,
15 yards, and terminals which should be included on the sys-
16 tem, including any which it finds should be considered for
17 inclusion and which have not been the subject of applications
18 filed by a railroad company or companies. Within sixty days
19 of the issuance of the Commission's tentative report, the Sec-
20 retary shall, and all other interested parties may, submit
21 comments to the Commission. The comments of the Secre-
22 tary shall, among other things, identify all short- to medium-
23 distance corridors in densely populated areas in which the
24 major upgrading of rail lines for high-speed passenger opera-

1 tion would return substantial public benefits in relation to
2 the cost of such upgrading.

3 **FINAL DESIGNATION OF THE SYSTEM**

4 **SEC. 303.** Upon consideration of such comments, and
5 following the holding of such public hearings as it deems
6 necessary, the Commission shall, within one year of the date
7 of enactment of this Act, release and submit to the Congress
8 the Federal-aid railroad system. The system as designated
9 by the Commission shall become effective for the purposes
10 of this Act upon the date that the report of the Commission
11 is submitted to Congress and shall not be reviewable in any
12 court.

13 **ADDITIONS TO AND DELETIONS FROM THE SYSTEM**

14 **SEC. 304.** At any time after the expiration of two years
15 following the designation of the system under section 303
16 of this title, any party may request the Commission to add
17 or delete rail lines to or from such system. The Commis-
18 sion shall, with reference to the Secretary's report prepared
19 in accordance with section 305 of this title, make the addi-
20 tion or deletion if provided with sufficient proof that such
21 addition or deletion is consistent with the public interest.
22 Approval of a deletion shall not be considered by the Com-
23 mission as evidence in an abandonment proceeding that serv-
24 ice on the line deleted is no longer required by public con-
25 venience and necessity.

1 RAILWAY NEEDS REPORT

2 SEC. 305. (a) The Secretary shall prepare and submit
3 to the Congress on January 1 of the second year following
4 enactment of this Act, and every second year thereafter, a
5 report, hereinafter referred to as the "Railway Needs Re-
6 port", setting forth major transportation services that should
7 be provided by railroads in the United States. In formulating
8 his report the Secretary shall take into consideration the
9 interests of persons and communities affected thereby; exist-
10 ing rail facilities and the pattern of service by railroads; the
11 facilities of alternative modes of transportation currently in
12 existence; the cost of establishing transportation facilities in
13 addition to existing facilities; the cost of providing service
14 by extension of existing transportation services; the cost of
15 providing transportation by rail and alternative modes; the
16 existing investment in the transportation facilities of rail
17 and alternative modes and the economic value thereof; the
18 existing pattern of service by alternative modes; and the
19 public interest in a balanced and economical transportation
20 system responsive to the needs of the public and the users
21 of such system.

22 (b) For the purposes of preparing the Railway Needs
23 Report, the Secretary shall undertake and carry out a
24 study of the long-term capital needs for line relocation,
25 tunneling, highway grade crossing elimination, electrifi-

1 eation, improvement of yards and terminals, and other
2 major upgrading of the railroad system of the United
3 States, including the high density corridors identified by the
4 Secretary under section 302 of this title. The study shall
5 include recommendations for investment priorities among
6 the various possible upgrading projects, and shall evaluate
7 the form and extent to which the Federal Government should
8 assist with the financing of such upgrading.

9

SYSTEM STANDARDS

10 SEC. 306. Concurrently with the designation of the
11 system under section 303 of this title, the Commission shall
12 prescribe standards for the rehabilitation and maintenance
13 of all main-line track on the system for dependable opera-
14 tion of freight trains at speeds up to sixty miles an hour and
15 passenger trains at speeds up to eighty miles an hour, and
16 of all yards and terminals on the system for the efficient
17 switching and classification of cars. In formulating such
18 standards, the Commission shall be guided by preferred or
19 recommended practices from an engineering and economic
20 standpoint as distinct from minimum requirements for safety.
21 In all respects other than those enumerated in this section,
22 all main-line track included within the system shall meet
23 the requirements for class four track of the track safety
24 standards prescribed by the Secretary pursuant to the Fed-
25 eral Railroad Safety Act of 1970 (45 U.S.C. 421 et seq.).

PROGRAMS

1
2 SEC. 307. As soon as practicable after the designation
3 of the system has been made, any railroad desiring to avail
4 itself of the benefits of this title shall submit to the Commis-
5 sion for its approval a program or programs of proposed
6 projects for the rehabilitation of lines, yards, and terminals
7 included on the system. The Commission shall act upon pro-
8 grams submitted to it as soon as practicable after the same
9 have been submitted. The Commission may approve a pro-
10 gram in whole or in part, but it shall not approve any project
11 in a proposed program which is not located on the system.
12 In approving programs for projects on the system, the Com-
13 mission shall give preference to such projects as will expedite
14 the completion of an adequate and connected system of rail-
15 roads, interstate in character.

PLANS, SPECIFICATIONS, AND ESTIMATES

16
17 SEC. 308. Railroads shall submit to the Commission for
18 approval, as soon as practicable after program approval,
19 such surveys, plans, specifications, and estimates for each
20 proposed project included in an approved program as the
21 Commission may require. The Commission shall act upon
22 such surveys, plans, specifications, and estimates as soon as
23 practicable after the same have been submitted, and its ap-
24 proval of any such project shall be deemed a contractual obli-
25 gation of the Federal Government for reimbursement of such

1 railroads of the cost thereof, as determined by the Commis-
2 sion, as provided in this title. In taking such action, the
3 Commission shall be guided by the provisions of section 309
4 of this title.

5 PROJECT STANDARDS

6 SEC. 309. (a) The Commission shall not approve plans
7 and specifications for proposed projects on the system if
8 they fail to provide for a facility that will adequately meet the
9 existing and probable future traffic needs and conditions
10 in a manner conducive to safety, durability, and economy
11 of maintenance; and that will be designed and constructed
12 in accordance with the standards best suited to accomplish
13 the foregoing objectives and to conform to the particular
14 needs of each locality.

15 (b) The geometric and construction standards to be
16 adopted for the system shall be approved by the Commis-
17 sion in cooperation with the participating railroads. Such
18 standards, as applied to each actual construction project,
19 shall be adequate to enable such project to accommodate
20 the types and volumes of traffic anticipated for such project
21 for the twenty-year period commencing on the date of ap-
22 proval by the Commission, under section 308 of this title,
23 of the plans, specifications, and estimates for actual con-
24 struction of such project.

1 PROJECT AGREEMENTS

2 SEC. 310. As soon as practicable after the plans, specifi-
3 cations, and estimates for a specific project have been ap-
4 proved, the Commission shall enter into a formal project
5 agreement with the railroad concerning the construction
6 and maintenance of such project.

7 RAILROAD EMPLOYEES

8 SEC. 311. All rehabilitation, maintenance, and improve-
9 ment work performed pursuant to this title shall be under-
10 taken by the railroad and shall be done by railroad em-
11 ployees. Such work shall be subject to the inspection and
12 approval of the Commission.

13 REIMBURSEMENT

14 SEC. 312. Upon execution of a project agreement, the
15 Commission is authorized to reimburse railroads for funds
16 expended by them in carrying out the design and construc-
17 tion of projects approved by it for inclusion on the system.
18 Partial payments may be made upon the completion by the
19 railroad and acceptance by the Commission of identifiable
20 tasks or subprojects, and need not await completion and
21 acceptance of the entire project.

22 JOINT USE

23 SEC. 313. Upon application to the Commission by any
24 rail carrier for the use of any rail line, yard, or terminal on

1 the system for performing transportation services, if the
2 applicant is fit, willing, and able to properly perform the
3 service proposed; if such service is or will be required by
4 the present or future public convenience and necessity; and
5 if the operations of the applicant will not significantly im-
6 pair the level of performance of the carrier or carriers already
7 using the line who are adequately serving the public, the
8 Commission shall by order require the joint use by the appli-
9 cant of such rail lines, yards, or terminal upon such terms
10 and conditions as are reasonable under the circumstances.

11 APPROPRIATIONS

12 SEC. 314. There are authorized to be appropriated to the
13 Commission such sums as may be necessary to bring all rail
14 lines, yards, and terminals on the system into compliance
15 with the requirements of this title and of the Federal Rail-
16 road Safety Act of 1970, and for the administration of this
17 title, but not to exceed \$400,000,000 in each of the two fiscal
18 years ending June 30, 1974, and June 30, 1975.

19 TRANSPORTATION TAX

20 SEC. 315. (a) There is hereby imposed upon the amount
21 paid within the United States for the transportation of prop-
22 erty, except by air, from one point in the United States to
23 another, beginning sixty days after the date of enactment of
24 this Act, a tax equal to 1 per centum of the amount so paid.
25 In the case of property transported from a point without the

1 United States to a point within the United States, the tax
2 shall apply to the amount paid within the United States for
3 that part of the transportation which takes place within the
4 United States. The tax imposed by this subsection shall apply
5 only to amounts paid to a carrier engaged in the transporta-
6 tion of property for hire, including amounts paid to a freight
7 forwarder, express company, or similar person, but not in-
8 cluding amounts paid by a freight forwarder, express com-
9 pany, or similar person for transportation with respect to
10 which a tax has previously been paid under this section.

11 (b) The tax imposed by this section shall be paid by the
12 person making the payment subject to the tax. Each person
13 receiving any payment specified in subsection (a) shall
14 collect the amount of the tax imposed from the person making
15 such payment, and shall, on or before the last day of each
16 month, make a return, under oath, for the preceding month,
17 and pay the taxes so collected to the Collector of Internal
18 Revenue in the Internal Revenue District in which its prin-
19 cipal place of business is located. Such returns shall contain
20 such information and be made in such manner as the Com-
21 missioner of Internal Revenue, with the approval of the
22 Secretary of the Treasury, may by regulations prescribe.

23 (c) The Commissioner of Internal Revenue may extend
24 the time for making returns and paying the taxes collected,
25 under such rules and regulations as he shall prescribe with the

1 approval of the Secretary of the Treasury, but no such ex-
2 tension shall be for more than ninety days.

3 (d) Every carrier engaged in the transportation, except
4 by air, of property for hire within the United States shall,
5 within sixty days after the effective date of this section, regis-
6 ter its name and place or places of business with the Collector
7 of Internal Revenue in the Internal Revenue District in
8 which is located its principal place of business.

9 (d) The Secretary of the Treasury may authorize ex-
10 emption from the tax imposed by this section as to any par-
11 ticular transportation service or class of transportation serv-
12 ices to be performed for the exclusive use of the United
13 States if he determines that the imposition of such tax with
14 respect to such service or class of services will cause substan-
15 tial burden or expense which can be avoided by granting tax
16 exemption and that the full benefit of such exemption, if
17 granted, will accrue to the United States.

18 (e) Effective with respect to transportation beginning
19 ten years from the date of enactment of this Act, the tax im-
20 posed by subsection (a) of this section shall not apply.

21 TITLE IV—LOCAL RAIL SERVICES

22 RAILROAD ABANDONMENT PROCEDURES

23 SEC. 401. Paragraphs (18), (19), (20), (21), and
24 (22) of section 1 of the Interstate Commerce Act (49
25 U.S.C. 1 (18) et seq.) are amended to read as follows:

1 “(18) No carrier by railroad subject to this part shall
2 undertake the extension of its line of railroad, or the con-
3 struction of a new line of railroad, or shall acquire or oper-
4 ate any line of railroad, or extension thereof, or shall engage
5 in transportation under this part over or by means of such
6 additional or extended line of railroad, unless and until there
7 shall first have been obtained from the Commission a certifi-
8 cate that the present or future public convenience and ne-
9 cessity require or will require the construction, or operation,
10 or construction and operation, of such additional or extended
11 line of railroad. Nothing in this paragraph or in section 5
12 shall be considered to prohibit the making of contracts be-
13 tween carriers by railroad subject to this part, without the
14 approval of the Commission, for the joint ownership or joint
15 use of spur, industrial, team, switching, or side tracks.

16 “(19) The application for and issuance of any such
17 certificate shall be under such rules and regulations as to
18 hearings and other matters as the Commission may from
19 time to time prescribe, and the provisions of this part shall
20 apply to all such proceedings. Upon receipt of any applica-
21 tion for such certificate the Commission shall cause notice
22 thereof to be given to and a copy filed with the Governor
23 of each State in which such additional or extended line of
24 railroad is proposed to be constructed or operated with the
25 right to be heard as hereinafter provided with respect to

1 the hearing of complaints or the issuance of securities; and
2 said notice shall also be published for three consecutive
3 weeks in some newspaper of general circulation in each
4 county in or through which said line of railroad is proposed
5 to be constructed or operated.

6 “(20) The Commission shall have power to issue such
7 certificate as prayed for, or to refuse to issue it, or to issue
8 it for a portion or portions of a line of railroad, or extension
9 thereof, described in the application, and may attach to the
10 issuance of the certificate such terms and conditions as in its
11 judgment the public convenience and necessity may require.
12 From and after issuance of such certificate, and not before,
13 the carrier by railroad may, without securing approval other
14 than such certificate, comply with the terms and conditions
15 contained in or attached to the issuance of such certificate
16 and proceed with the construction or operation covered
17 thereby.

18 “(21) The Commission may, after hearing, in a pro-
19 ceeding upon complaint or upon its own initiative without
20 complaint, authorize or require by order any carrier by rail-
21 road subject to this part, party to such proceeding, to provide
22 itself with safe and adequate facilities for performing as a
23 common carrier its car service as that term is used in this
24 part, and to extend its line or lines. No such authorization or
25 order shall be made unless the Commission finds, as to such

1 extension, that it is reasonably required in the interest of
2 public convenience and necessity, or as to such extension or
3 facilities that the expense involved therein will not impair the
4 ability of the carrier to perform its duty to the public. Any
5 carrier subject to this part which refuses or neglects to com-
6 ply with any order of the Commission made in pursuance of
7 this paragraph shall be liable to a penalty of \$100 for each
8 day during which such refusal or neglect continues, which
9 shall accrue to the United States and may be recovered in a
10 civil action by the United States.

11 “(22) Except in the case of an abandonment of opera-
12 tions pursuant to a restructuring plan adopted by the Com-
13 mission as provided in title II of the Federal-Aid Railroad
14 Act of 1973, no carrier by railroad subject to this part shall
15 abandon all or any portion of a line of railroad, or the opera-
16 tion thereof, except in accordance with this paragraph unless
17 and until there shall first have been obtained from the Com-
18 mission a certificate that the present or future public con-
19 venience and necessity permit of such abandonment. A car-
20 rier or carriers may file with the Commission a notice to
21 abandon a line of railroad, or the operation thereof, which
22 notice shall be made under such rules and regulations as the
23 Commission may from time to time prescribe, and the provi-
24 sions of this part shall apply to all such proceedings. Aban-
25 donments pursuant to such notice shall be governed by the

1 provisions of this paragraph, the laws or constitution of any
2 State, or the decision or order of, or the pendency of any
3 proceeding before, any court or State authority to the
4 contrary notwithstanding. The carrier or carriers filing notice
5 with the Commission pursuant to this paragraph shall file
6 simultaneously with the Commission a certificate of service
7 of the notice by mail upon the Governor of each State in
8 which all or any portion of the line of railroad, or the opera-
9 tion thereof, is proposed to be abandoned, and a certificate
10 of posting of notice in every station on such line and a cer-
11 tificate that notice has been published for three consecutive
12 weeks in a newspaper of general circulation in each county
13 in or through which said line of railroad operates. Notice
14 shall also be given to all shippers and receivers who have
15 used the line in the preceding eighteen months. All notices
16 provided for in this paragraph shall be filed with the Com-
17 mission at least ninety days in advance of any abandonment
18 of any line of railroad or operation thereof pursuant to such
19 notice and to this paragraph. Upon the filing of any notice
20 pursuant to this paragraph, the Commission shall during
21 said ninety days' notice period upon complaint of an ag-
22 grieved party, or may upon its own initiative, enter upon an
23 investigation of the action proposed in the notice. If no
24 such investigation is instituted, the Commission shall issue a
25 certificate at the expiration of the ninety days' notice period

1 that public convenience and necessity permit the abandon-
2 ment proposed in the notice. If an investigation is instituted,
3 the Commission, by order served upon the carrier or carriers
4 affected thereby at least ten days prior to the day on which
5 the abandonment proposed in the notice would otherwise
6 become effective, shall postpone the abandonment in whole
7 or in part, pending investigation, but not for a longer period
8 than eight months beyond the date when such abandonment
9 would otherwise have become effective. If, following such
10 investigation, the Commission finds that the public conven-
11 ience and necessity does not permit of the abandonment, it
12 may, if necessary, order the restoration of the line or the
13 operation thereof. Any investigation instituted under this
14 paragraph may include full public hearings at a point or
15 points on or reasonably adjacent to the line proposed to be
16 abandoned, either on the Commission's own motion or when
17 such hearings are requested by any interested party. The
18 abandonment proposed in the notice shall become effective
19 sixty days after the Commission shall have issued an order
20 finding such abandonment consistent with public convenience
21 and necessity. The Commission may, in such order, and sub-
22 ject to the other provisions of this paragraph, authorize the
23 abandonment of a portion or portions of the line of railroad,
24 or the operation thereof, described in the notice, or the partial
25 exercise only of such privilege, and attach to the issuance

1 of the certificate of abandonment such terms and conditions
2 as, in its judgment, the public convenience and necessity
3 may require. In determining whether to make such finding
4 the Commission shall consider the following: losses in op-
5 crating the line proposed to be abandoned, as measured by
6 costs of service including maintenance cost and such repairs
7 or improvements necessary to continue the line at a physi-
8 cal standard necessary to provide safe, reliable, and efficient
9 service; extent of actual use of and need for the line by ship-
10 pers or receivers; and the development of an efficient and
11 economical transportation system: *Provided, however, That*
12 *the abandonment shall be allowed unless continued opera-*
13 *tion of the line proposed to be abandoned will produce suf-*
14 *ficient revenue to cover the avoidable costs of handling*
15 *traffic to, from, and beyond the line: And provided further,*
16 *That a finding permitting an abandonment shall be subject*
17 *to the provisions of paragraph (27) of this section. Partial*
18 *changes in operation or service shall be treated in accordance*
19 *with paragraph (4) of this section. In any investigation*
20 *hereunder, the burden of proof shall be on the carrier."*

21 **ADDITIONAL ABANDONMENT PROCEDURES**

22 **SEC. 402.** Section 1 of part I of the Interstate Com-
23 merce Act (49 U.S.C. 1) is amended by adding at the end
24 thereof the following new paragraphs:

25 “(23) Any construction, operation, or abandonment

1 contrary to the provisions of paragraph (18), (19), or
2 (22) of this section may enjoined by any United States
3 district court of competent jurisdiction at the suit of the
4 United States, the Commission, any commission or regulat-
5 ing body of the State or States affected, or any party in
6 interest; and any carrier which, or any director, officer, re-
7 ceiver, operating trustee, lessee, agent, or person, acting for
8 or employed by such carrier, who, knowingly authorizes,
9 consents to, or permits any violation of the provisions of
10 paragraph (18), (19), or (22) of this section shall be
11 fined not more than \$5,000 or imprisoned not more than
12 three years, or both.

13 “(24) The authority of the Commission conferred by
14 paragraphs (18) to (22) of this section, both inclusive,
15 shall not extend to the construction, acquisition, or abandon-
16 ment of spur, industrial, team, switching, or side tracks,
17 located or to be located wholly within one State, or of street,
18 suburban, or interurban electric railways, which are not
19 operated as a part or parts of a general railroad system of
20 transportation.

21 “(25) (a) Within one hundred and twenty days after
22 enactment of this paragraph, each railroad shall prepare and
23 file with the Commission and publish in accordance with
24 regulations promulgated by the Commission a full and com-
25 plete diagram of its transportation system describing its low-

1 density rail lines, as that term shall be defined by the Com-
2 mission. In defining 'low-density rail lines' for the purposes
3 of this part, the Commission may adopt standards which vary
4 among regions of the country or among individual railroads
5 or groups of railroads. A railroad shall also identify on such
6 diagram any other line for which it may seek authority to
7 abandon. A railroad shall amend its diagram as the Com-
8 mission shall require, to reflect any changes in this system.

9 “(b) No carrier shall abandon all or any portion of a line
10 of railroad (or operation thereof), the abandonment of which
11 is opposed by any person who has used the service provided
12 thereon during the eighteen months preceding the date of fil-
13 ing of the abandonment application or is opposed by any
14 State, county, or municipality served by that line, unless such
15 railroad line has been identified on the diagram provided for
16 in subparagraph (a) of this paragraph for at least eighteen
17 months.

18 “(26) In the event the Commission shall during the
19 eight months provided for in paragraph (22) make a finding
20 that the public convenience and necessity permit abandon-
21 ment, it shall also concurrently make a determination of the
22 extent to which, if any, the revenues attributable to the line,
23 lines, or operations in question cover the relevant avoidable
24 costs referred to in paragraph (22).

25 “(27) Any carrier undertaking the abandonment of a

1 line of railroad or a portion thereof or the operations there-
2 over pursuant to the provisions of this section, shall be re-
3 quired to protect the interests of employees affected by such
4 abandonment. Such protective arrangements shall be those
5 agreed to by the carrier and the representatives of its em-
6 ployees or, in the absence of such agreement, as the Commis-
7 sion shall determine. Such protective arrangements shall be
8 included in an order to be issued by the Commission at the
9 end of ninety days' notice period or the eight months' sus-
10 pension period, as the case may be.

11 “(28) Within one hundred and eighty days following
12 the date of enactment of this paragraph and as required
13 thereafter, the Commission shall determine, pursuant to sec-
14 tion 553 of title 5, United States Code, and shall publish
15 standards for determining the ‘avoidable costs of handling
16 traffic’ and ‘revenues attributable to the line’ as those terms
17 are used in this section.

18 “(29) In any instance in which the Commission shall
19 have found that the present or future public convenience and
20 necessity permit the abandonment of any line of railroad, the
21 Governor of any State in which all or a portion of such line
22 is located may, prior to the effective date of the Commission's
23 order, notify the Commission and the railroad performing
24 the service involved if it is the State's intention to provide
25 operating subsidies for the railroad in order to assure continu-

1 ance of service found by the State to be essential. Upon such
2 notice, the Commission may order an additional postpone-
3 ment of the abandonment of not more than six months in
4 order to permit arrangements for subsidy to be made.

5 “(30) In any instance in which the Commission finds
6 that the present or future public convenience and necessity
7 permit the abandonment of any line of railroad, the Commis-
8 sion shall impose as a condition of such abandonment the
9 tracks and other structures or facilities be removed so as to
10 return the land held in conjunction with the operation of
11 such abandoned line to a safe condition suitable for other
12 use. The Commission shall also impose as a condition, where
13 appropriate, an opportunity for acquisition of such land by
14 any governmental body for public use or otherwise.

15 “(31) Applications for abandonment filed with the
16 Commission before the date of enactment of this paragraph,
17 shall be governed by the provisions of section 1 of this Act
18 (49 U.S.C. 1) as in effect on the date of the application,
19 except that the issuance of a certificate authorizing abandon-
20 ment shall be stayed if, prior to the effective date of the
21 Commission’s order finding that the public convenience and
22 necessity permit of the abandonment, the Governor of any
23 State within which the line authorized to be abandoned is
24 located notifies the Commission and the railroad of the
25 State’s intention to provide an operating subsidy.”

1 MAINTAINING ESSENTIAL RAIL SERVICES

2 SEC. 403. (a) The Commission is authorized pursuant
3 to regulations prescribed by it to reimburse a State for 70
4 per centum of the amount paid by such State as operating
5 subsidy to continue service on a rail line or lines that would
6 otherwise have been abandoned. In determining whether to
7 make such reimbursement the Commission shall accept the
8 State's determination of need for continuation of the railroad
9 service which would otherwise have been abandoned. It
10 may require adjustment in the amount of the subsidy to be
11 paid if it finds such amount to be grossly disproportionate
12 to the level of service to be provided.

13 (b) Within six months from the date of enactment of
14 this title, the Commission shall prescribe regulations govern-
15 ing the procedure for application by a State for reimburse-
16 ment of railroad operating subsidies and setting forth the con-
17 ditions required of all contracts or other arrangements for
18 operating subsidy.

19 (c) If the Commission finds that an operating subsidy
20 contract or other arrangement as submitted fails to comply
21 with its regulations or that the amount of the subsidy to be
22 paid is grossly disproportionate to the level of service to be
23 provided, it shall so advise the State within thirty days of
24 the receipt of the application for reimbursement, in writing,
25 together with the reasons therefor, and shall afford the State

1 a period of fifteen days within which to revise such contract
2 or other arrangement.

3 (d) An operating subsidy contract between a State
4 and a railroad may be for any period of time, but the length
5 of time during which the Commission may reimburse the
6 State, as provided in this title, for operating subsidies paid
7 to continue operation of any particular line of railroad shall
8 not exceed three years.

9 (e) The Commission shall not reimburse a State for
10 operating subsidy paid to a railroad unless such State has
11 adopted legislation extending authority to the Governor or
12 other appropriate State official or agency to perform its
13 obligations in accordance with the terms of this title and
14 regulations issued by the Commission.

15 (f) There is authorized to be appropriated to the Com-
16 mission not to exceed \$50,000,000 in each fiscal year to
17 carry out the purposes of this title.

18 (g) The initial capital costs of restoring or upgrading
19 a line of railroad or other facilities to such condition as
20 necessary for the provision of service may not be included
21 in an operating subsidy contract or other arrangement. Such
22 capital costs may be prorated over the life of such line or
23 facilities and such prorated cost may be included as part of
24 the cost of an operating subsidy contract or other arrange-
25 ment.

[H.R. 4897, 93d Congress, 1st session, introduced by Mr. Adams on February 28, 1973, and
H.R. 5822, 93d Congress, 1st session, introduced by Mr. Adams (for himself, Mr. Boland, Mr. Burke of Massachusetts, Mr. Helstoski, Mr. Howard, Mr. Moakley, Mr. Podell, Mr. Thompson of New Jersey, Mr. Tiernan, Mr. Studds, and Mr. Yatron) on March 20, 1973, are identical as follows:]

A BILL

To create a not-for-profit corporation to acquire and to maintain rail lines in the Northeast region of the United States; to provide financial assistance for the acquisition, rehabilitation, and maintenance of such rail lines; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Essential Rail Services
4 Act of 1973".

5 TITLE I—DEFINITIONS

6 SEC. 101. For the purposes of this Act the term—

7 (1) "Commission" means the Interstate Com-
8 merce Commission;

1 (2) "Corporation" means the Northeast Rail Line
2 Corporation created by this Act;

3 (3) "Northeast region" means the States of Maine,
4 New Hampshire, Vermont, Massachusetts, Connecticut,
5 Rhode Island, New York, New Jersey, Pennsylvania,
6 Delaware, Maryland, Virginia, West Virginia, Ohio,
7 Indiana, Michigan, and Illinois, together with the Dis-
8 trict of Columbia;

9 (4) "rail carrier" includes railroad companies;
10 mail, express, or less-than-carload freight carriers; State,
11 regional, or local transportation agencies; the National
12 Railroad Passenger Corporation; and other private pas-
13 senger carriers;

14 (5) "rail line" includes main rail track or tracks;
15 side tracks and yard tracks adjacent to such main
16 tracks; the roadbed supporting such tracks; signaling,
17 communication, and power transmission structures and
18 devices as are permanently installed on or adjacent
19 to such tracks and roadbed; bridges, culverts, fills,
20 tunnels, and other structures occupied by such tracks
21 and roadbed; real estate occupied by such tracks and
22 roadbed; and real estate adjacent to such tracks and
23 roadbed which is used for drainage of, maintenance of,
24 access to, and protection of such tracks and roadbed;
25 but does not include classification yards; station and

1 terminal tracks and facilities, other than running tracks;
2 any structures and devices other than those specified in
3 this paragraph; and does not include air rights over,
4 nor mineral rights under, such tracks and roadbed;

5 (6) "railroad company" means a class I or class
6 II railroad, including switching and technical companies,
7 as defined by the Interstate Commerce Commission and
8 subject to part I of the Interstate Commerce Act; and

9 (7) "Secretary" means the Secretary of Trans-
10 portation.

11 TITLE II—NORTHEAST RAIL LINE
12 CORPORATION

13 CREATION OF THE CORPORATION

14 SEC. 201. There is authorized to be created a North-
15 east Rail Line Corporation. The corporation shall be a not-
16 for-profit corporation, the purpose of which shall be to re-
17 habilitate, maintain, and modernize rail lines so as to fully
18 develop the potential of modern rail service in meeting the
19 transportation requirements in the Northeast region of the
20 Nation. The corporation will not be an agency or establish-
21 ment of the United States Government. It shall be subject
22 to this Act, and, to the extent consistent with this Act, to
23 the District of Columbia Not-For-Profit Corporation Act.
24 The right to repeal, alter, or amend this Act at any time is
25 expressly reserved.

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1 (3) One member of the board shall be appointed by
2 the President of the United States upon recommendation
3 of the House of Representatives leader (Speaker or minority
4 leader) of the political party opposite to the political party
5 of the President for a term of four years, except that the
6 first member appointed shall continue in office for a term
7 of three years.

8 (4) Three members of the board shall be appointed
9 annually by the National Governors Conference upon recom-
10 mendation of the Governors of the States of the Northeast
11 region. One of the members appointed shall be of the op-
12 posite political party to the other two members.

13 (5) Two members of the board shall be elected annually
14 by the railroad companies who have conveyed rail lines to
15 the corporation. Each such railroad company shall have one
16 vote per one billion gross ton-miles in freight train service
17 operated during the last calendar year for which such data
18 has been reported to the Interstate Commerce Commission.
19 If the gross ton-miles of any single railroad company
20 together with its controlled and affiliated subsidiaries is more
21 than 50 per centum of the total eligible to vote, such com-
22 pany and subsidiaries shall be eligible to vote for only one
23 of the two members.

24 (6) One member of the board shall be appointed an-
25 nually by the National Railroad Passenger Corporation.

1 (7) One member of the board shall be appointed an-
2 nually by the Congress of Railway Unions.

3 (8) One member of the board shall be appointed
4 annually by the Railway Labor Executives Association.

5 (9) One member of the board shall be appointed an-
6 nually by the National Industrial Traffic League.

7 (b) Any member selected to fill a vacancy may be
8 selected only for the unexpired term of the director whom
9 he or she succeeds. A director whose term has expired shall
10 continue to serve until his or her successor is selected.

11 (c) Upon the inauguration of a President of a different
12 political party than his or her predecessor, successors of
13 members who have been appointed upon recommendation of
14 the Senate and House leaders shall be appointed by the
15 President in accordance with paragraph (1) of subsection
16 (a) of this section, and successors of members who have
17 been so appointed shall be appointed upon recommendation
18 of the Senate and House leaders, the first such successor
19 upon recommendation of the Senate leader.

20 (d) No director other than those elected by railroad
21 companies may have any direct or indirect financial or
22 employment relationship with any railroad company during
23 the time that he or she serves on the board.

24 (e) No director elected by railroad companies shall
25 vote on any action of the board of directors relating to any

1 contract or operating relationship between the corporation
2 and a rail carrier, but he or she may be present at meetings
3 of the board at which such matters are voted upon, and
4 may be included for purposes of determining a quorum and
5 may participate in discussion at any such meeting.

6 (f) Each director shall receive compensation at a rate
7 of \$300 for each meeting of the board that he or she at-
8 tends. In addition, each director shall be reimbursed for
9 necessary travel and subsistence expenses incurred in at-
10 tending the meetings of the board.

11 BYLAWS AND OFFICERS

12 SEC. 204. (a) The board of directors is empowered
13 to adopt and amend bylaws governing the operation of the
14 corporation. Such bylaws shall not be inconsistent with the
15 provisions of this Act, the District of Columbia Not-for-
16 Profit Corporation Act, or of the articles of incorporation.

17 (b) The corporation shall have a president and such
18 other officers as may be named and appointed by the board.
19 The rates of compensation of all officers shall be fixed by
20 the board. Officers shall serve at the pleasure of the board.
21 No individual other than a citizen of the United States may
22 be an officer of the corporation. No officer of the corpora-
23 tion may have any direct or indirect employment or financial
24 relationship with any railroad company during the time
25 of his or her employment by the corporation.

GENERAL POWERS

1
2 SEC. 205. The corporation is authorized to own, possess,
3 construct, control, maintain, rehabilitate, and modernize rail
4 lines, including operation of signalling and communication
5 systems; to acquire by construction, purchase, or gift, or
6 contract for the use of, real estate, physical facilities, equip-
7 ment, and devices necessary to its functions; to exercise
8 the power of eminent domain in connection with such acqui-
9 sitions; and to conduct research and development related to
10 its mission. To carry out its functions and purposes, the cor-
11 poration shall have the usual powers conferred upon a not-
12 for-profit corporation by the District of Columbia Not-for-
13 Profit Corporation Act. Leases and contracts entered into
14 by the corporation, regardless of where the same may be
15 executed, shall be governed by the laws of the District of
16 Columbia.

ISSUANCE OF DEBENTURES

17
18 SEC. 206. The corporation is hereby authorized to issue
19 debentures of a face value of up to \$1,000,000,000 for the
20 purpose of financing the acquisition of rail lines of railroad
21 companies in the Northeast region (as defined in section
22 101(3)) which are presently, or will be in the future,
23 undergoing reorganization in bankruptcy proceedings in
24 United States district courts. Debentures shall be issued
25 serially and shall mature not later than twenty years from

1 the date of issuance including all extensions and renewals
2 thereof.

3 **BOOKS AND RECORDS**

4 SEC. 207. (a) The corporation shall maintain books
5 and records in accordance with the Uniform System of Ac-
6 counts prescribed by the Interstate Commerce Commission,
7 insofar as is applicable.

8 (b) The corporation shall file form A report with
9 the Interstate Commerce Commission at the same time and
10 in substantially the same format as such reports of rail-
11 road companies, insofar as such format is applicable.

12 (c) The Interstate Commerce Commission is hereby
13 empowered to promulgate and modify rules and regulations
14 governing accounting and recordkeeping requirements of
15 the corporation, if and when such action is deemed ap-
16 propriate in view of the nature of the corporation and the
17 requirements of this Act.

18 (d) All books, papers, records, and documents of the
19 corporation, other than internal memorandums, shall at all
20 times be open to public inspection. Any person desiring to
21 inspect such material shall reimburse the corporation for the
22 time of corporation employees required to assist with such
23 inspection. Any person requesting reproduction of any such
24 material shall reimburse the corporation for the cost of such
25 reproduction.

1 AUDIT OF RECORDS OF THE CORPORATION AND OF CERTAIN
2 RAILROAD COMPANIES

3 SEC. 208. (a) (1) The accounts of the corporation shall
4 be audited annually in accordance with generally accepted
5 auditing standards by independent certified public account-
6 ants or independent licensed public accountants certified or
7 licensed by a regulatory authority of a State or other political
8 subdivision of the United States. The audit shall be conducted
9 at the place or places where the accounts of the corporation
10 are normally kept. All books, accounts, financial records,
11 reports, files, and other papers, things, or property belonging
12 to or in use by the corporation and necessary to facilitate the
13 audit shall be made available to the person conducting the
14 audit; and full facilities for verifying transactions with the
15 balances or securities held by depositories, fiscal agents, and
16 custodians shall be afforded to such person.

17 (2) The report of each such independent audit shall be
18 included in the annual report required by section 209 (b) of
19 this Act. The audit report shall set forth the scope of the
20 audit and include such statements as are necessary to present
21 fairly the corporation's assets and liabilities, surplus or deficit,
22 with an analysis of the changes therein during the year, sup-
23 plemented in reasonable detail by a statement of the corpora-
24 tion's income and expenses during the year, and a statement

1 of the sources and application of funds, together with the
2 independent auditor's opinion of those statements.

3 (b) (1) The financial transactions of the corporation
4 for any fiscal year during which Federal funds are avail-
5 able to finance any portion of its operations may be audited
6 by the Comptroller General of the United States in accord-
7 ance with the principles and procedures applicable to com-
8 mercial corporate transactions and under such rules and
9 regulations as may be prescribed by the Comptroller General.
10 Any such audit shall be conducted at the place or places
11 where accounts of the corporation are normally kept. The
12 representative of the Comptroller General shall have access
13 to all books, accounts, records, reports, files, and other
14 papers, things, or property belonging to or in use by the
15 corporation pertaining to its financial transactions and neces-
16 sary to facilitate the audit, and they shall be afforded full
17 facilities for verifying transactions with the balances or
18 securities held by depositories, fiscal agents, and custodians.
19 All such books, accounts, records, reports, files, papers, and
20 property of the corporation shall remain in possession and
21 custody of the corporation.

22 (2) To the extent the Comptroller General deems
23 necessary in connection with audits as he may make of the
24 financial transactions of the corporation pursuant to para-

1 graph (1) of this subsection, his representatives shall have
2 access to all books, accounts, records, reports, files, and
3 other papers, things, or property belonging to or in use by
4 any railroad company which has conveyed rail lines to the
5 corporation, or by any rail carrier which has used or is
6 using corporation rail lines, pertaining to such railroad
7 company's or rail carrier's financial transactions and neces-
8 sary to facilitate the audit, and such representatives shall be
9 afforded full facilities for verifying transactions with the
10 balances or securities held by depositories, fiscal agents, and
11 custodians. All such books, accounts, records, reports, files,
12 papers, and property of such railroad company or rail carrier
13 shall remain in the possession and custody therewith.

14 (3) A report of each such audit shall be made by the
15 Comptroller General to the Congress. The report to the Con-
16 gress shall contain such comments and information as the
17 Comptroller General may deem necessary to inform Con-
18 gress of the financial operations and condition of the cor-
19 poration, together with such recommendations with respect
20 thereto as he may deem advisable. The report shall also show
21 specifically any program, expenditure, or other financial
22 transaction or undertaking observed in the course of the audit,
23 which, in the opinion of the Comptroller General, has been
24 carried on or made without authority of law. A copy of each

1 report shall be furnished to the President, to the Secretary,
2 and to the corporation at the time submitted to the Congress.

3 QUARTERLY AND ANNUAL REPORTS

4 SEC. 209. (a) Within thirty days following the end of
5 each quarter of the year, the corporation shall release to the
6 public a complete report of its activities and finances for the
7 previous quarter. Such report shall include, but not be limited
8 to, the amount and location of new and relay rail laid; ties
9 installed or replaced; miles of track surfaced; signals and in-
10 terlockers installed or replaced; grade crossing protection in-
11 stalled; and communication systems installed. The report
12 shall also include a summary of all train derailments and col-
13 lisions on corporation rail lines, including the probable cause
14 thereof.

15 (b) On or before October 31 of each year, the corpora-
16 tion shall submit to the President and to the Congress, and
17 release to the public, a comprehensive and detailed report of
18 its activities and accomplishments during the preceding fis-
19 cal year, including a balance sheet and statement of receipts
20 and expenditures. The report shall include a projection of re-
21 cepts and expenditures for the current fiscal year, and a
22 proposed budget for the forthcoming fiscal year, which shall
23 provide specific justification for each and every proposed
24 expenditure.

1 **TITLE III—ACQUISITION OF RAIL LINES BY**
2 **THE CORPORATION**
3 **CONVEYANCES OF RAIL LINES OF BANKRUPT RAILROAD**
4 **COMPANIES**

5 **SEC. 301. (a)** Within six months after enactment of
6 this Act, and in consideration of debentures to be issued
7 by the corporation in an amount equivalent to just com-
8 pensation as determined in accordance with section 302
9 of this title—

10 (1) the trustees of all railroad companies which
11 are undergoing reorganization in bankruptcy proceed-
12 ings in Federal district courts, and a majority of whose
13 rail lines are located in the Northeast region;

14 (2) all owners of rail lines leased to such railroad
15 companies; and

16 (3) all wholly owned subsidiaries and affiliates of
17 such railroad companies

18 may convey or cause to be conveyed to the corporation
19 all rail lines owned or operated by such railroad companies
20 free and clear of all liens, charges, and encumbrances.

21 (b) Such conveyances shall not be deferred by reason
22 of any controversy concerning the amount of compensation
23 to be paid, and shall not be restrained or enjoined by any
24 court on account of such controversy.

1 COMPENSATION FOR RAIL LINES

2 SEC. 302. (a) Compensation for rail lines acquired by
3 the corporation shall be the net liquidation value of the
4 property conveyed.

5 (b) Compensation for rail lines conveyed by trustees
6 in bankruptcy shall be fixed by the United States district
7 court before which the bankruptcy proceedings are being
8 held, in accordance with subsection (a) of this section.

9 (c) Compensation for rail lines conveyed by others
10 than trustees in bankruptcy may be negotiated by the
11 parties in accordance with the standards set forth in sub-
12 section (a) of this section. In the event of a failure to agree,
13 the property owner may institute an action in the United
14 States district court in which the property is located for a
15 final determination of the compensation due from the
16 corporation.

17 CONVEYANCES OF OTHER RAIL LINES

18 SEC. 303. On or after six months from the date of en-
19 actment of this Act, and in consideration of the assumption
20 by the corporation of all maintenance, rehabilitation, sig-
21 naling, and communication functions, and the payment of
22 State and local property taxes, any railroad company, sub-
23 sidiary, or affiliate other than those specified in section 301
24 of this title, the majority of whose rail lines are located

1 in the Northeast region, may convey to the corporation all
2 its right, title, and interest in all its rail lines, or in those of
3 its rail lines, including branches and feeders, which are sub-
4 stantially parallel to rail lines already conveyed to the
5 corporation.

6 LEASED RAIL LINES IN FOREIGN COUNTRIES

7 SEC. 304. Upon the conveyance to the corporation of
8 rail lines by any railroad company, subsidiary, or affiliate,
9 the corporation shall assume and fulfill the obligations of such
10 railroad company, subsidiary, or affiliate of all leases of
11 railroad real estate located in foreign countries.

12 TITLE IV—OPERATION OF CORPORATION RAIL
13 LINES

14 OPERATIONAL RESPONSIBILITIES OF CORPORATION

15 SEC. 401. (a) Upon acquisition of the rail lines of any
16 railroad company, the corporation shall, consistent with
17 the provisions of section 408 of this title, assume responsi-
18 bility for the rehabilitation and maintenance of such rail
19 lines, and for the operation of signaling and communication
20 devices on such rail lines.

(b) Within ninety days after enactment of this Act, the Secretary shall prescribe standards for maintenance of all main rail lines of the corporation, with respect to track geometry, rail mismatch, rail-end batter, and frogs, for smooth, dependable operation of freight trains at speeds up

1 to sixty miles an hour and passenger trains at speeds up to
2 eighty miles an hour. In formulating such standards, the Sec-
3 retary shall be guided by preferred or recommended practices
4 from an engineering and economic standpoint as distinct from
5 minimum requirements for safety.

6 (c) In all respects other than those enumerated in
7 subsection (a), all main rail line of the corporation shall
8 meet the requirements for class four track of the track safety
9 standards prescribed by the Secretary pursuant to the Fed-
10 eral Railroad Safety Act of 1970 (45 U.S.C. 421 et seq.).

11 (d) All main rail lines of the corporation shall be in
12 compliance with standards prescribed in accordance with
13 this section on or before the expiration of two years follow-
14 ing the date of promulgation of standards by the Secretary.

15 (e) The corporation shall make capital improvements
16 on its rail lines in accordance with its evaluation of expected
17 benefits from such improvements in relation to the cost
18 thereof, and in accordance with available financial resources.
19 Such capital improvements shall include, but not be limited
20 to, interlocking devices; centralized traffic control; improved
21 safety devices governing train movements; extra main tracks;
22 new and extended sidings; interchange and connecting
23 tracks; removal of restrictive clearances; improved grade
24 crossing protection; and reduction of curves and grades.

FREIGHT SERVICE

1
2 SEC. 402. (a) A railroad company which conveys its
3 rail lines to the corporation, or which holds trackage rights
4 over rail lines which are conveyed to the corporation, shall
5 have the right to continue operations as a rail carrier of
6 freight over all such rail lines that it was conducting such
7 operations prior to the conveyance thereof, in return for pay-
8 ment to the corporation of \$0.60 per thousand gross ton-
9 miles of locomotive and train operation. The terms and con-
10 ditions of preexisting agreements and contracts for the use
11 of track and other facilities shall be of no force and effect as
12 between the corporation and any rail carrier, but insofar as
13 applicable, shall remain in effect as between two or more rail
14 carriers of freight using the same rail line.

15 (b) Upon application to the Commission by any rail
16 carrier for the use of any rail line of the corporation for freight
17 service, if the applicant is fit, willing, and able to properly
18 perform the service proposed; if such service is or will be
19 required by the present or future public convenience and
20 necessity; and if the operations of the applicant will not
21 significantly impair the level of performance of the carrier or
22 carriers already using the line who are adequately serving
23 the public, the Commission shall by order require the corpo-
24 ration to permit the applicant to use such rail line for com-
25 pensation to the corporation at \$0.60 per thousand gross ton-

1 miles of locomotive and train operation, and upon such other
2 terms and conditions as are reasonable under the circum-
3 stances.

4 (c) If, in the opinion of the corporation, the transfer
5 of freight traffic off of one rail line and onto another rail
6 line will permit significant economies through reduction in
7 maintenance expenditures, it may apply to the Commission
8 for an order requiring such transfer. If after notice and
9 hearing the Commission finds that such transfer will not
10 result, directly or indirectly, in a significant impairment in
11 the rail service provided to any rail customer, the Commis-
12 sion shall issue an order requiring the transfer on such terms
13 and conditions as are reasonable. Applications under this
14 section shall be acted upon by the Commission within one
15 hundred and twenty days after the application is filed.

16 (d) No one shall commence freight operations over
17 rail lines of the corporation other than in accordance with
18 the provisions of this section.

19 PASSENGER SERVICE

20 SEC. 403. (a) Any rail carrier shall have the right to
21 continue passenger service over any rail line conveyed to
22 the corporation at the same frequency with which it was
23 providing such service prior to the conveyance, in return
24 for payment to the corporation of \$0.60 per thousand gross-
25 ton-miles of locomotive and train operation. All preexisting

1 agreements and contracts for the provision of passenger
2 service shall be of no force and effect as between the corpo-
3 ration and such rail carrier.

4 (b) (1) Any rail carrier shall have the right to initiate
5 new passenger service, or to increase the frequency of pas-
6 senger service already being provided, in return for payment
7 to the corporation of \$0.60 per thousand gross-ton-miles
8 of locomotive and train operation, unless the corpora-
9 tion determines that the rail carrier is not fit, willing, and
10 able to properly perform the service proposed.

11 (2) A rail carrier or freight shipper whose service or
12 operations are affected by new or expanded passenger service
13 may file an application with the Secretary requesting ap-
14 propriate relief. If after hearing and upon sufficient proof
15 the Secretary finds that such passenger service causes a sig-
16 nificant downgrading of the quality of service provided to
17 freight shippers, he shall issue an order fixing such terms
18 and conditions for the operation of such passenger service
19 as are reasonable in the interest of adequate freight service.

20 OPERATING RULES

21 SEC. 404. (a) The corporation shall have the power to
22 fix rights of trains, maximum train speeds, size and weight
23 limits for equipment, and other rules governing operations
24 over corporation rail lines. The provisions of this Act and
25 of rules adopted by the corporation shall supersede the terms

1 of any agreements previously entered into between rail
2 carriers and railroad companies for the provision of passen-
3 ger service.

4 (b) (1) Except in an emergency, passenger trains shall
5 be accorded preference over freight trains in the use of any
6 given line of track, junction, or crossing of the corporation,
7 unless the Secretary has issued an order to the contrary in
8 accordance with paragraph (2) of this subsection.

9 (2) A rail carrier or freight shipper whose service or
10 operations are affected by paragraph (1) above may file an
11 application with the Secretary requesting appropriate re-
12 lief. If after hearing and upon sufficient proof, the Secretary
13 finds that adherence to paragraph (1) causes a significant
14 downgrading of the quality of service provided to freight
15 shippers, he shall issue an order fixing rights of trains, on
16 such terms and conditions as are reasonable in the interest
17 of adequate freight service.

18 LIABILITY FOR INJURY AND DAMAGE

19 SEC. 405. The corporation shall be responsible for all
20 bodily injury and property damage arising out of any acci-
21 dent or occurrence caused by defects in, or improper main-
22 tenance of, track, roadbed, signals, communications, or
23 other facilities owned or controlled by the corporation or
24 caused by the negligence of a corporation employee. Rail
25 carriers shall be responsible for all bodily injury and prop-

1 erty damage arising out of any accident or occurrence caused
2 by reasons other than those enumerated in the preceding
3 sentence.

4 REDUCTION IN CAPACITY OF RAIL LINES

5 SEC. 406. If at any time the corporation desires to real-
6 ize economies through the elimination of any extra main
7 track or tracks, or other type of reduction in capacity of any
8 of its rail lines that would not result in elimination of service
9 to any point, it shall give notice of its intention to the car-
10 riers using the line, to the States and localities through which
11 the line runs, and to any other person who has requested to
12 be given such notice. The corporation may proceed with such
13 elimination or reduction on or later the expiration of one
14 hundred and twenty days following the giving of notice un-
15 less it determines, on the basis of protests submitted in re-
16 sponse to the notice, that such elimination or reduction will
17 not be consistent with the present and future public interest
18 in adequate rail service.

19 ABANDONMENT OF RAIL LINES

20 SEC. 407. (a) The corporation shall not abandon any
21 rail line in whole or in part except in accordance with this
22 section.

23 (b) Within one hundred and twenty days after enact-
24 ment of this Act, the corporation shall prepare and file with
25 the Commission, and serve by registered mail all Governors

1 of affected States; chief executives of affected communities
2 and regional agencies; all rail carriers operating on corpo-
3 ration rail lines; and anyone else who has requested to be
4 served, a full and complete list and diagram of its rail lines
5 describing in particular those lines during the prior calendar
6 year on which less than one million gross ton-miles of traffic
7 were carried per mile, or on which less than thirty-five
8 carloads originated or terminated per mile. The corporation
9 shall also identify on such list or diagram any other line for
10 which it may seek authority to abandon, including the traffic
11 density on such line during the prior calendar year in terms
12 of gross ton-miles and of carloads originated and terminated.
13 Such list and diagram shall be amended quarterly to reflect
14 any additions or deletions of rail lines thereon. Such amend-
15 ments shall be filed and served in the same manner and to
16 the same extent as the original list and diagram.

17 (c) The corporation shall not give notice of a proposed
18 abandonment of all or any portion of a rail line unless such
19 rail line has been identified on the list and diagram required
20 by subsection (b) for at least one year, and unless all pas-
21 senger service on such rail line has been terminated.

22 (d) At such time as the corporation determines to
23 abandon any rail line in whole or in part, it may file with
24 the Commission and serve by registered mail all Governors
25 of affected States; chief executives of affected communities

1 and regional agencies; all rail carriers operating on the
2 line; and anyone else who has requested to be served, notice
3 of the proposed abandonment at least one hundred and
4 twenty days prior to the proposed effective date thereof.
5 Abandonments pursuant to such notice shall be governed
6 by the provisions of this section, the laws or constitution of
7 any State, or the decision or order of the pendency of any
8 proceeding before, any court or State authority to the con-
9 trary notwithstanding. Such notice shall include a full and
10 complete statement of the estimated expense to be borne by
11 the corporation for rehabilitating the line and for its con-
12 tinuing annual maintenance, together with estimated receipts
13 from rail carriers using the line, and shall otherwise be in
14 such form as the Commission shall prescribe. A copy of
15 the working papers underlying all data contained in the
16 notice shall be filed with the Commission contemporaneously
17 with the notice, and made available by the Commission for
18 public inspection. A copy of such working papers shall also
19 be made available for public inspection at the principal office
20 of the corporation.

21 (e) Upon the filing and serving of any notice pursuant
22 to subsection (d), parties who may be affected by the pro-
23 posed abandonment shall have thirty days to file protests
24 with the Commission against such abandonment. Such pro-
25 tests shall contain a complete and concise justification for

1 requiring that the rail line not be abandoned, in such form
2 as the Commission may prescribe. Such protests shall be
3 mailed to all rail carriers using the line.

4 (f) Within thirty days after the date for filing protests,
5 the Commission may enter upon an investigation of the
6 abandonment proposed in the notice, and, unless all service
7 on the line has been terminated, it shall enter upon such an
8 investigation. If no such investigation is instituted, the Com-
9 mission shall issue a certificate at the expiration of such
10 thirty-day period that public convenience and necessity per-
11 mit the abandonment proposed in the notice, upon such
12 terms and conditions as are reasonable.

13 (g) If an investigation is instituted, the Commission,
14 by order served upon the corporation and rail carrier or car-
15 riers affected thereby at least sixty days prior to the day on
16 which the abandonment proposed in the notice would other-
17 wise become effective, shall postpone the abandonment in
18 whole or in part, pending hearing and such investigation,
19 but not for a longer period than nine months from the date
20 of issuance of such order. Any investigation instituted under
21 this paragraph shall include full public hearings at a point
22 or points on or reasonably adjacent to the line proposed to
23 be abandoned. On or before the expiration of the nine-month
24 period, the Commission shall determine whether the proposed
25 abandonment is consistent with public convenience and ne-

1 cessity. In making such determination, the Commission shall
2 consider the following: avoidable cost, less receipts to the
3 corporation from rail carriers using the line, of maintaining
4 the line proposed to be abandoned, as measured by cost of
5 recurring maintenance and such repairs or improvements
6 necessary to continue the line at a physical standard nec-
7 essary to provide safe, reliable, and efficient service; extent
8 of actual use of and need for the line by shippers or receivers;
9 prospects for reduction of losses through traffic increases,
10 reduced expenses, or other changes; prospects for future de-
11 velopment of passenger service, and provision of efficient and
12 economical transportation for rural areas. The burden of
13 proof in support of the abandonment shall be on the
14 corporation.

15 (h) If the Commission determines that the abandon-
16 ment in whole or in part is consistent with public convenience
17 and necessity, it shall issue a certificate authorizing such
18 abandonment, upon such terms and conditions as are rea-
19 sonable, to be effective sixty days after the expiration of the
20 nine months' investigation period. Upon the effective date of
21 the certificate, the rail carrier or carriers using the rail line
22 shall terminate operations unless such effective date has been
23 suspended in accordance with subsection (i).

24 (i) If prior to the effective date of any certificate au-
25 thorizing an abandonment in whole or in part of any rail line

1 of the corporation, a State, regional, or local agency, or
2 private entity, makes a binding commitment to pay to the
3 corporation 50 per centum of the maintenance and rehabili-
4 tation costs, less receipts from rail carriers using the line,
5 of the line to be abandoned, such certificate shall be sus-
6 pended for so long a period as such commitment is met.

7 (j) In disposing of any real estate which becomes avail-
8 able through abandonment, the corporation shall consider
9 preserving such real estate for future transportation needs
10 and to the maximum extent feasible, make such real estate
11 available to public or nonprofit agencies for recreational or
12 other public use. Any such real estate which was originally
13 granted to any railroad company by Federal, State, or local
14 governments shall revert to such grantor.

15 PROTECTION FOR EMPLOYEES

16 SEC. 408. (a) All rehabilitation, maintenance, and
17 improvement work, and signaling and communication oper-
18 ations, performed by the corporation shall be done by
19 railroad company employees under the direction and super-
20 vision of the corporation. Collective bargaining agreements
21 previously entered into between any bargaining unit rep-
22 resenting such employees and such railroad company shall
23 remain in full force and effect. Upon request of the corpo-
24 ration, a railroad company shall initiate and pursue nego-
25 tiations for revision of such agreements in accordance with

1 procedures specified therein or otherwise required by law.
2 Such railroad company shall give due consideration to the
3 recommendations of the corporation before entering into any
4 new or revised agreement.

5 (b) The corporation shall be subject to the same laws
6 and regulations with respect to the representation of its
7 employees for purposes of collective bargaining, the han-
8 dling of disputes between employer and employees, compen-
9 sation for job-related injuries and other disabilities, employee
10 retirement annuity, unemployment systems, and other deal-
11 ings with its employees as any carrier subject to part I of
12 the Interstate Commerce Act.

13 (c) No owner or possessor of rail lines shall contract
14 out any project for rehabilitation or maintenance work re-
15 quired by this Act of a value of over \$450 per month in
16 labor and materials which is normally performed by em-
17 ployees in any bargaining unit covered by a labor agree-
18 ment between such owner or possessor and any labor
19 organization.

20 (d) Owners and possessors of rail lines shall take such
21 action as may be necessary to insure that all laborers and
22 mechanics employed by contractors and subcontractors in
23 the performance of construction work financed with the
24 assistance of funds received under this Act shall be paid
25 wages at rates not less than those prevailing on similar

1 construction in the locality as determined by the Secretary
2 of Labor in accordance with the Davis-Bacon Act. No one
3 shall enter into any construction contract or agreement with-
4 out first obtaining adequate assurance that required labor
5 standards will be maintained on the construction work.
6 Health and safety standards promulgated by the Secretary
7 of Labor pursuant to section 107 of the Contract Work
8 Hours and Safety Standards Act (40 U.S.C. 333) shall
9 be applicable to all construction work performed under such
10 contracts or agreements, except any construction work per-
11 formed by an employee of the corporation or of a rail-
12 road company. Wage rates provided for in collective
13 bargaining agreements negotiated under and pursuant to the
14 Railway Labor Act shall be considered as being in compli-
15 ance with the Davis-Bacon Act.

16 (e) (1) In connection with any transaction under this
17 title for access to rail lines; removal of freight traffic; or
18 abandonment of any rail line, the corporation or rail carrier
19 whose employees will be affected by such action shall be
20 required to protect the interests of its respective employees.
21 Such protective arrangements shall be those agreed to by
22 the corporation or rail carrier and the representatives of its
23 employees, or in the absence of such agreement, as the Com-
24 mission may determine. Such protective arrangements shall
25 be included in any order which authorizes such transaction.

1 (2) The protective arrangements required by paragraph
2 (1) shall protect individual employees from the date first
3 affected against a worsening of their positions with respect
4 to their employment and shall include, without being limited
5 to, such provisions as may be necessary (A) to provide for
6 notice and negotiation and execution of implementing agree-
7 ments prior to the interests of employees being affected:
8 *Provided, however, That* where such implementing agree-
9 ment has not been executed within thirty days after the
10 date on which the action became effective either party may
11 submit for binding arbitration any unresolved questions in
12 connection therewith, the arbitration decision to be rendered
13 if possible within thirty days thereafter, but if such decision
14 is for any reason delayed beyond said thirty days, the rights
15 of the parties to such arbitration shall not be affected; (B)
16 for the preservation of compensation (including subsequent
17 wage increases), rights, privileges, and benefits (including
18 fringe benefits such as pensions, hospitalization, vacations,
19 and the like, under the same conditions and so long as such
20 benefits continue to be accorded to other employees of the
21 corporation or rail carrier in active service or on furlough
22 as the case may be) to such employees under existing collec-
23 tive-bargaining agreements or otherwise; and (C) to pro-
24 vide for the arbitration of disputes arising out of the protec-
25 tive arrangements which cannot be settled by the parties. In

1 such arbitrations the burden shall be upon the corporation or
2 rail carrier to prove that the employee was not affected by
3 the action taken. In no event shall said arrangements pro-
4 vide benefits less than those established pursuant to section
5 5 (2) (f) of the Interstate Commerce Act.

6 TITLE V—FINANCIAL ASSISTANCE

7 ORGANIZATIONAL EXPENSES OF CORPORATION

8 SEC. 501. There is hereby appropriated to the Secretary
9 in fiscal year 1974 the sum of \$5,000,000 to remain
10 available until expended for disbursement to the corporation
11 for the purpose of assisting in the initial organization and
12 operation of the corporation.

13 REHABILITATION OF RAIL LINES BY CORPORATION

14 SEC. 502. There is hereby authorized to be appropriated
15 to the Secretary for disbursement to the corporation such
16 sums as may be necessary to bring all rail lines into com-
17 pliance with the requirements of this Act and of the Rail
18 Safety Act of 1970, but not to exceed \$300,000,000 in each
19 of the two fiscal years ending June 30, 1974, and June 30,
20 1975.

21 MAINTENANCE, TAXES, AND CAPITAL IMPROVEMENTS BY
22 CORPORATION

23 SEC. 503. There is hereby authorized to be appropriated
24 to the Secretary for disbursement to the corporation such
25 sums as may be necessary to reimburse the corporation for

1 the annual amounts spent for maintenance, State and local
2 property taxes, capital improvements, and overhead expense,
3 over and above annual receipts from user charges imposed
4 by section 502 of this Act. Appropriations under this section
5 shall not exceed \$100,000,000 in any one fiscal year.

6 GUARANTEE OF DEBENTURES ISSUED BY CORPORATION

7 SEC. 504. (a) Holders of debentures issued by the
8 corporation in accordance with the provisions of this Act
9 for the purchase of rail lines are hereby guaranteed against
10 loss of principal and interest, which guarantee shall consti-
11 tute a general obligation of the United States of America
12 backed by the full faith and credit of the Government of the
13 United States of America. Such guarantee shall not be ter-
14 minated, canceled, or otherwise revoked; shall be conclusive
15 evidence that such guarantee complies fully with the pro-
16 visions of this Act and of the legality of the principal amount,
17 interest rate, and all other terms of the debentures and of the
18 guarantee; and shall be valid and incontestable in the hands
19 of a holder of a guaranteed debenture, except for fraud or
20 material misrepresentation on the part of such holder.

21 (b) Upon any default by the corporation on principal
22 or interest on any debentures, the Secretary of the Treasury
23 shall pay to the holder of such debentures the principal and
24 interest due. For that purpose he is authorized to use as a
25 public debt transaction the proceeds from the sale of any

1 securities issued under the Second Liberty Bond Act, as
2 amended, and the purposes for which securities may be issued
3 under that Act are extended to include such payments. All
4 such payments shall be treated as public debt transactions of
5 the United States.

6 TITLE VI—MISCELLANEOUS PROVISIONS

7 POWERS OF THE SECRETARY

8 SEC. 601. The Secretary is authorized to perform
9 such acts, including, but not limited to, conducting investiga-
10 tions, holding hearings, making reports, issuing subpoenas,
11 requiring production of documents, taking depositions, pro-
12 scribing recordkeeping and reporting requirements, promul-
13 gating rules and regulations, and delegating to any public
14 bodies or qualified persons functions respecting examination,
15 inspecting, and testing of railroad facilities as he deems
16 necessary to carry out the provisions of this Act. Officers,
17 employees, or agents of the Secretary are authorized to enter
18 upon, inspect, and examine corporation facilities and perti-
19 nent books, papers, and records. Such officers, employees,
20 and agents shall display proper credentials when requested.

21 ENFORCEMENT

22 SEC. 602. (a) The United States district court shall, at
23 the request of the Secretary and upon petition by the Attor-
24 ney General on behalf of the United States, have jurisdiction
25 subject to the provisions of rules 65 (a) and (b) of the

1 Federal Rules of Civil Procedure, to enforce the provisions of
2 this Act, and orders of the Secretary issued thereunder, by
3 the issuance of injunctions or restraining orders or by the
4 granting of such other relief as may be appropriate.

5 (b) It shall be unlawful for the corporation or any
6 railroad company to disobey, disregard, or fail to adhere
7 to the provisions of this Act or to any rule, regulation, order,
8 or standard prescribed by the Secretary under this Act.

9 (c) The corporation or any railroad company violating
10 any rule, regulation, order or standard referred to in sub-
11 section (a) shall be assessed by the Secretary a civil penalty
12 for violation thereof in such amount, not less than \$250 nor
13 more than \$2,500, as he deems reasonable. Each day of such
14 violation shall constitute a separate offense.

15 (d) Such civil penalty is to be recovered in a suit or suits
16 to be brought by the Attorney General on behalf of the
17 United States in the district court of the United States having
18 jurisdiction in the locality where such violation occurred.
19 Civil penalties may, however, be compromised by the Sec-
20 retary for any amount, but in no event for an amount less
21 than the minimum provided in this section, prior to referral
22 to the Attorney General. The amount of any such penalty,
23 when finally determined, or the amount agreed upon in
24 compromise, may be deducted from any sums owing by the
25 United States to the person charged. All penalties collected

1 under this Act shall be covered into the Treasury as miscel-
2 laneous receipts.

3 (e) In any action brought under this Act, subpoenas for
4 witnesses who are required to attend a United States district
5 court may run into any other district.

6 OTHER RIGHTS AND LIABILITIES RESERVED

7 SEC. 603. Nothing contained in this Act shall be con-
8 strued as depriving any person of any right of action which
9 he may have otherwise than under this Act, or of relieving
10 any person of any punishment, liability, or sanction which
11 may be imposed otherwise than under this Act.

12 SEPARABILITY

13 SEC. 604. If any provision of this Act or the application
14 thereof to any person or circumstance is held invalid, the
15 remainder of the Act and the application of such provision
16 to other persons or circumstances shall not be affected
17 thereby.

[H.R. 5385, 93d Congress, 1st session, introduced by Mr. Adams (for himself, Mr. Jarman, Mr. Dingell, Mr. Podell, Mr. Devine, Mr. Kuykendall, Mr. Bergland, and Mr. Breckinridge) on March 8, 1973, and
H.R. 6880, 93d Congress, 1st session, introduced by Mr. Adams (for himself, Mr. Pickle, Mr. Gilman, Mr. Helstoski, and Mr. Rangel) on April 12, 1973,
are identical as follows:]

A BILL

To restore and maintain a healthy transportation system, to provide financial assistance, to improve competitive equity among surface transportation modes, to improve the process of Government regulation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Surface Transportation
4 Act of 1973".

5 **TITLE I—FINANCIAL ASSISTANCE TO SUR-**
6 **FACE TRANSPORTATION COMPANIES**

Sec. 101. Short title.

Sec. 102. Establishment of a Revenue Financing Division, Department of Transportation, for financial assistance to surface transportation companies.

Sec. 103. Establishment of a Railroad Equipment Obligation Insurance Fund, Department of Transportation.

Sec. 104. Rolling stock scheduling and control systems

1 **SEC. 101. SHORT TITLE.**

2 This title may be cited as the "Revenue Financing
3 Division and Railroad Equipment Obligation Insurance
4 Fund Act".

5 **SEC. 102. ESTABLISHMENT OF A REVENUE FINANCING**
6 **DIVISION, DEPARTMENT OF TRANSPORTA-**
7 **TION, FOR FINANCIAL ASSISTANCE TO SUR-**
8 **FACE TRANSPORTATION COMPANIES.**

9 The Interstate Commerce Act, as amended, is amended
10 by inserting immediately after part V the following new
11 part:

12 **"PART VI**

13 **"PURPOSE**

14 **"SEC. 601. It is the purpose of this part to provide for**
15 **financial assistance to surface transportation carriers subject**
16 **to this Act to aid them in acquiring, financing, constructing,**
17 **maintaining, and operating facilities and equipment for such**
18 **purposes, and in such a manner, as to encourage maximum**
19 **employment and production and to foster the preservation**
20 **and development of a national transportation system ade-**
21 **quate to meet the needs of the commerce of the United**
22 **States and of the national defense.**

23 **"REVENUE FINANCING DIVISION**

24 **"SEC. 602. There is hereby created within the Depart-**
25 **ment of Transportation a new division to be known as the**

1 'Revenue Financing Division' (hereinafter in this part re-
2 ferred to as the 'Division'). In operation of the Division, the
3 Secretary of Transportation (hereinafter in this part re-
4 ferred to as the 'Secretary') is authorized to aid in financing
5 the transportation industry and commerce and to help in
6 maintaining its economic stability and that of the country
7 by promoting maximum employment and production, in
8 the manner hereinafter provided. The principal office of the
9 Division shall be in the District of Columbia, but there may
10 be established agencies or branch offices in any city or cities
11 of the United States under rules and regulations prescribed
12 by the Secretary.

13 "FUNCTIONS AND DUTIES OF ASSISTANT SECRETARY

14 "SEC. 603. The Secretary shall designate an Assistant
15 Secretary of Transportation provided for under section 3 (c)
16 of the Department of Transportation Act (49 U.S.C. 1652
17 (c)) to assist the Secretary in the execution of his functions
18 under this part. In addition to performing such functions,
19 powers, and duties as the Secretary shall from time to time
20 prescribe, the Assistant Secretary designated under this sec-
21 tion shall serve as a member of the Loan Policy Board es-
22 tablished under section 604 of this part and, during the ab-
23 sence or disability of the Secretary or in the event of a
24 vacancy in the Office of the Secretary, shall serve as the
25 Chairman of the Loan Policy Board.

"LOAN POLICY BOARD

1
2 "SEC. 604. (a) There is hereby established a Loan Pol-
3 icy Board of the Revenue Financing Division, which shall
4 be composed of the following members, all ex-officio: The
5 Secretary, as Chairman, the Assistant Secretary of Trans-
6 portation designated under section 603 of this part as Vice
7 Chairman, the Chairnan of the Federal Reserve Board, the
8 Secretary of the Treasury, the Secretary of Commerce, and
9 two other members who shall be designated from time to time
10 by the President from among the officers of the United States
11 who are required to be appointed by and with the advice and
12 consent of the Senate. Any of the foregoing may designate an
13 officer of his department or agency to act in his stead as a
14 member of the Loan Policy Board with respect to any mat-
15 ters. The two members designated by the President shall
16 serve for terms of four years and be eligible for
17 reappointment.

18 "(b) The Loan Policy Board shall establish any neces-
19 sary general policies (particularly with reference to the pub-
20 lie interest involved in the granting and denial of applications
21 for financial assistance by the Secretary and with reference
22 to coordination with other activities and policies of the Gov-
23 ernment) which shall govern the granting or denying of
24 applications for financial assistance by the Secretary. Any
25 such policies so established shall be appropriately published.

5

1 "DELEGATION OF AUTHORITY BY SECRETARY

2 "SEC. 605. The Secretary may from time to time make
3 such provisions as he shall deem appropriate with respect to
4 the performance by any officer, employee, or administrative
5 unit under his jurisdiction of any function of the Secretary.

6 "LOAN GUARANTEE POWERS

7 "SEC. 606. (a) Where it has been determined by the
8 Secretary that financial assistance is not otherwise available
9 on reasonable terms and that the public interest would be
10 served, the Secretary within the limitations hereinafter pro-
11 vided in this part, is authorized on such terms and conditions
12 required by this part to guarantee lenders against loss of
13 principal and interest on loans made to any common carrier
14 in the transportation industry organized or operating under
15 the laws of any State, the District of Columbia, Puerto Rico,
16 Guam, the Virgin Islands, or the United States.

17 "(b) The Attorney General shall take such action as
18 may be appropriate to enforce any right accruing to the
19 United States by reason of its having paid money or in-
20 curred expenses as a result of any loan guarantee made
21 under this part.

22 "RESTRICTIONS AND LIMITATIONS

23 "SEC. 607. The powers granted in section 606 of this
24 part shall be subject to the following restrictions and
25 limitations:

1 “(a) The Secretary shall determine that the prospec-
2 tive earning power of the enterprise, together with the char-
3 acter and value of the security pledged, if any, furnish rea-
4 sonable assurance that the enterprise will be able to repay
5 the loan within the time fixed and afford reasonable protec-
6 tion to the United States.

7 “(b) (1) No loan, including renewals or extensions
8 thereof, may be guaranteed under section 606 for a period
9 or periods exceeding fifteen years: *Provided*, That any loan
10 guarantee may be extended for an additional five years
11 beyond the fifteen-year limitation period if the Secretary
12 determines that the carrier's financial condition is improving
13 significantly and that such carrier will be able to repay the
14 loan within the additional five years: *Provided further*, That
15 the foregoing restriction on maturities shall not apply to secu-
16 rities or obligations received by the Secretary as a claimant
17 in bankruptcy or equitable reorganization or as a creditor in
18 proceedings under section 20b of this Act, as amended.

19 “(2) The aggregate amount of loan guarantees to any
20 common carrier shall not exceed 15 per centum of the
21 amount appropriated for such purpose under the provisions
22 of section 615.

23 “(3) The total amount of loan guarantees made after
24 the date of enactment of this part which the Secretary may

1 have outstanding at any one time shall not exceed
2 \$2,000,000,000.

3 “(4) The original term of any loan guarantee shall not
4 be extended unless there is reasonable cause to believe that
5 the total amount of funds supplied including interest thereon
6 can be repaid within twenty years from the date of initial
7 disbursement. In any event, the determination of the public
8 interest served shall control and be paramount in the approval
9 or disapproval of any loan guarantee or extension thereof.

10 “(5) In the case of a common carrier by railroad, as
11 defined in section 618 (2), no loan guarantee may be author-
12 ized by the Secretary except in the financing or refinancing
13 of expenditures made in acquiring, construction, maintaining,
14 or developing the following railroad facilities:

15 “(A) Track subject to traffic usage of at least five
16 million gross ton-miles per mile of road per year and
17 determined by the Secretary to be essential for present
18 and future rail service needs.

19 “(B) Structures and similar improvements.

20 “(C) Railroad communications and power trans-
21 mission systems.

22 “(D) Signals.

23 “(E) Terminal facility modernization and consoli-
24 dation.

25 For purposes of this paragraph—

1 “(i) the term ‘track’ means (I) rail, (II) ties,
2 (III) ballast, (IV) other track materials, (V) grad-
3 ing, and (VI) tunnels;

4 “(ii) the term ‘structures and similar improvements’
5 means (I) bridges, trestles, and culverts, (II) elevated
6 structures, (III) stations and office buildings used for
7 operating purposes only, (IV) repair shops and engine-
8 houses, (V) trailer-on-flat-car and container-on-flat-car
9 terminals, and (VI) construction of public improve-
10 ments;

11 “(iii) the term ‘railroad communication systems’
12 means electronic communications systems, microwave,
13 wireless, and automatic data processing systems;

14 “(iv) the term ‘power transmission systems’ means
15 (I) powerplants, (II) power transmission systems, and
16 (III) powerplant machinery;

17 “(v) the term ‘signals’ means signals and inter-
18 lockers; and

19 “(vi) the term ‘terminal facility’ means a facility
20 providing railroad terminal and switching facilities and
21 services to railroads and their shippers and passengers.

22 The above terms shall have the same meaning as they are
23 given in the Uniform System of Accounts as prescribed by
24 the Interstate Commerce Commission.

25 “(c) The Secretary may not authorize any such loan

1 guarantee with respect to a common carrier by railroad
2 unless satisfied that the expenditures in the foregoing cate-
3 gories will improve the utilization and distribution of rolling
4 stock and materially contribute to the efficiency of rail
5 operations.

6 “(d) The Secretary shall determine that the manage-
7 ment of the enterprise is efficient and is actively pursuing
8 programs designed to upgrade and develop plant facilities
9 and operations sufficient to meet the needs of the public.

10 “LOAN GUARANTEE APPROVAL AND REVIEW

11 “SEC. 608. (a) All applications for loan guarantees
12 must be approved by the Secretary. In any instance
13 where such an application is approved over the adverse rec-
14 ommendation of the Board of Review provided for in section
15 609, or disapproved over the recommendation of said Board,
16 a memorandum shall be placed in the loan guarantee file
17 setting forth the Secretary's reasons for such approval or
18 disapproval.

19 “(b) Each loan guarantee made by the Secretary under
20 this part to any lender shall be conditioned upon the execu-
21 tion of an agreement between the Secretary and the bor-
22 rower by which such borrower shall undertake that it will
23 not, within two years after the date of the making of such
24 loan, employ, tender any office or employment to, or retain
25 for professional services any person who on the date such loan

1 was made or within one year prior thereto shall have served
2 as Secretary or Assistant Secretary referred to in section 603
3 of this part, or as an officer, attorney, agent, or employee
4 of the Division occupying a position or engaging in activities
5 which the Secretary shall have determined to involve the
6 exercise of discretion with respect to the making of loan
7 guarantees to borrowers unless—

8 “(1) the Secretary shall have determined that such
9 person, on the date such loan guarantee was made and
10 within one year prior thereto, was employed by the Divi-
11 sion only in a branch or field office of the Division which
12 did not, and under ordinary procedures of the Division
13 would not, perform any function in connection with the
14 negotiation, modification, supervision, or collection of
15 such loan guarantee; or

16 “(2) such person shall be employed at the request
17 of the Secretary upon his determination that such em-
18 ployment is advisable to safeguard the interests of the
19 Treasury, will receive no compensation from the Secre-
20 tary for such employment other than his regular salary,
21 and will receive no compensation from such borrower
22 for such employment.

23 “BOARD OF REVIEW

24 “SEC. 609. (a) All applications for loan guarantees
25 shall be reviewed by a Board of Review consisting of not

1 less than five persons selected by the Secretary from among
2 personnel of the Division having major responsibilities
3 assigned to them and who shall receive no additional com-
4 pensation for such services. It shall be the duty of the Board
5 to submit to the Secretary a written decision or finding in
6 each case. Each member of the Board shall serve without
7 compensation other than his regular salary from the Di-
8 vision and shall not be removed from the Board without
9 cause.

10 “(b) No application for a loan guarantee shall be
11 approved by the Secretary unless the basis for the deter-
12 mination of the public interest served as required by section
13 606 has been reduced to writing and made a permanent part
14 of the files of the Secretary. Notwithstanding the provisions
15 of section 605, the Secretary shall make the determination
16 in all cases where the applications total \$1,000,000 or more
17 with respect to any borrower.

18 “REPRESENTATION FEES

19 “SEC. 610. (a) It shall be unlawful for any applicant
20 for a loan guarantee under the provisions of this part, di-
21 rectly or indirectly, to pay or agree to pay or to procure
22 any person to pay or agree to pay, or for any other person
23 directly or indirectly to receive, or agree to receive, any
24 fee, commission, bonus, or other compensation of any kind,
25 in connection with any application for or the obtaining of

1 a loan guaratee, in excess of reasonable compensation for
2 proper services so rendered as determined by the Secretary.
3 Each loan guarantee granted shall be on condition that the
4 borrower shall accept the determination of the Secretary,
5 made pursuant to regulations established by the Secretary,
6 as conclusive of the reasonableness of such compensation.
7 Amounts thus allowed shall be made matters of public
8 information.

9 “(b) Any applicant for a loan guaratee under the
10 provisions of this part who pays or agrees to pay, or any
11 other person who receives or agrees to receive, any fee,
12 commission, bonus, or other compensation of any kind in
13 connection with any application for a loan guarantee and
14 who fails to report or to insure that it is reported in the
15 application or in a supplemental amendment to the appli-
16 cation filed with the Division prior to the granting of such
17 loan guarantee, or who thereafter makes or receives such
18 a payment, or enters into an agreement providing for such
19 payment, without prior approval of the Division, shall be
20 fined not more than \$10,000, or imprisoned not more than
21 five years, or both.

22 “(c) The Secretary, Assistant Secretary referred to in
23 section 603 of this part, officer, attorney, agent, or em-
24 ployee of the Secretary shall not participate in any manner,
25 directly or indirectly, in the deliberation upon or the deter-

1 mination of any question affecting his personal interest, or
2 the interests of any corporation, partnership, or association
3 in which he is directly or indirectly interested.

4 "PUBLIC RECORD OF LOAN GUARANTEE APPLICATIONS

5 "SEC. 611. The Secretary shall maintain as a perma-
6 nent part of the Division records a docket which during the
7 regular business hours of the Division shall be kept available
8 for public inspection. The following information shall be
9 posted in the docket without delay upon receipt of an appli-
10 cation for a loan guarantee—

11 "(1) the name of the applicant, and in the case of
12 corporate applicants, the names of the officers and di-
13 rectors thereof;

14 "(2) the amount and duration of the loan for which
15 application for guarantee is made;

16 "(3) the purpose for which the proceeds of the loan
17 are to be used;

18 "(4) a description of the security offered, if any;
19 and

20 "(5) the names of all persons who shall represent
21 the applicant or who shall intercede for the applicant or
22 who shall attempt to influence the Division in any man-
23 ner either for or against the applicant in the exercise
24 of its judgment in connection with the loan guarantee.

25 Duplicate copies of this docket shall be maintained, one copy

1 in the Division records and one copy in the office of the Di-
2 vision in which the loan guarantee application was filed.

3 "REIMBURSEMENT OF OTHER AGENCIES

4 "SEC. 612. In carrying out the provisions of this part,
5 the Secretary may use available services and facilities of other
6 departments, agencies, and instrumentalities of the Federal
7 Government with their consent and on a reimbursable basis.

8 "INFORMATION FROM OTHER AGENCIES

9 "SEC. 613. In order to enable the Secretary to carry out
10 the provisions of this part, the Comptroller of the Currency,
11 the Federal Reserve Board, the Federal Reserve banks, the
12 Securities and Exchange Commission, the Department of
13 the Treasury, the Interstate Commerce Commission, the
14 Federal Maritime Commission, and the Civil Aeronautics
15 Board are hereby directed, under such conditions as they
16 may prescribe, to make available to the Secretary at his
17 request such recommendations, reports, records or other
18 information as they may have relating to the condition of
19 existing borrowers and applicants for loan guarantees under
20 this part, or relating to obligors whose obligations are offered
21 to or held by the Secretary as security for loans under this
22 part. These departments, as well as any agencies, and in-
23 strumentalities of the Federal Government shall exercise their
24 powers, duties, and functions in such manner as will assist
25 in carrying out the provisions of this part.

1 “LOAN INTEREST AND GUARANTEE FEES

2 “SEC. 614. (a) Each loan guaranteed by the Secretary
3 under this part shall bear interest at such per annum rate as
4 the Secretary deems reasonable, taking into account the
5 range of interest rates prevailing in the private market for
6 similar loans and the risks assumed by the Federal Govern-
7 ment.

8 “(b) The Secretary shall prescribe and collect from the
9 lender a reasonable annual guarantee fee in connection with
10 each loan guaranteed under this part. Such fee shall be in
11 an amount that the Secretary estimates to be necessary to
12 cover the administrative costs of carrying out the provisions
13 of this part with respect to such loan.

14 “AUTHORIZATION FOR APPROPRIATIONS

15 “SEC. 615. There are authorized to be appropriated,
16 without fiscal year limitation, such sums as may be necessary
17 to carry out the purposes of this part but not to exceed in the
18 aggregate \$2,000,000,000. Amounts appropriated under this
19 section, together with any sums received in operation of the
20 Division, shall become and will be administered as a revolv-
21 ing fund to effectuate the provisions of this part.

22 “REPORTS TO CONGRESS

23 “SEC. 616. (a) The Secretary shall make a report of
24 the Division operations to the Congress at the end of each
25 quarter of the calendar year. At the end of each fiscal year,

1 an audit of the Division operations for such year shall be
2 independently conducted by the Comptroller General and
3 a report of his findings together with any recommendation
4 submitted, not later than September 30, to the Congress of
5 the United States.

6 “(b) Within six months after the close of each fiscal
7 year the Secretary shall make a report to the Congress of the
8 United States which shall contain the financial statements
9 for the fiscal year, including a balance sheet, a statement of
10 income and expenses for all loan guarantee operations, a
11 statement of income and expenses for major classes of loan
12 guarantees, and an analysis of accumulated net income. The
13 accumulated net income shall be determined after provisions
14 for reasonable reserves for uncollectibility of loans outstand-
15 ing. Such statements shall be prepared from the financial rec-
16 ords of the Division which shall be maintained in accordance
17 with generally accepted accounting principles, including the
18 maintenance of adequate records so that the development of
19 data necessary to report the results of its loan guarantee activ-
20 ities by major classes of loan guarantees can be accomplished.
21 The report shall contain schedules showing, as of the close of
22 the fiscal year, loan guarantees totaling \$1,000,000 or more
23 to any one borrower.

24 “CRIMINAL PENALTIES

25 “SEC. 617. (a) Whoever makes any statement know-
26 ing it to be false, or whoever willfully overvalues any secu-

1 rity, for the purpose of obtaining for himself or for any
2 applicant any loan guarantee, or extension thereof by re-
3 newal, deferment of action, or otherwise, or the acceptance,
4 release, or substitution of security therefor, or for the purpose
5 of influencing in any way the action of the Secretary or
6 the Division, or for the purpose of obtaining money, prop-
7 erty, or anything of value, under this part, shall be fined
8 not more than \$10,000 or imprisoned not more than five
9 years, or both.

10 “(b) Whoever, being connected in any capacity with
11 the Department of the Treasury—

12 “(1) embezzles, abstracts, purloins, or willfully
13 misapplies any moneys, funds, securities, or other things
14 of value, whether belonging to the Division or pledged
15 or otherwise entrusted to the Division, or

16 “(2) with intent to defraud the Division, or to
17 deceive any officer, auditor, or examiner of the Division,
18 makes any false entry in any book, report, or state-
19 ment of or to the Division, or, without being duly
20 authorized, draws any order or issues, puts forth or
21 assigns any note, debenture, bond, or other obligation,
22 or draft, bill of exchange, mortgage, judgment, or
23 decree thereof, or

24 “(3) with intent to defraud, receives directly or
25 indirectly any money, profit, property, or benefit

1 through any transaction, loan commission, contract, or
2 any other act of the Division, or

3 “(4) gives any unauthorized information concern-
4 ing any future action or plan of the Division which
5 might affect the value of securities, or having such
6 knowledge, invests or speculates, directly or indirectly,
7 in the securities or property of any company, bank,
8 or corporation receiving loan guarantees from the
9 Division,

10 shall be fined not more than \$10,000 or imprisoned not
11 more than five years, or both.

12 “DEFINITION OF COMMON CARRIER

13 “SEC. 618. As used in this part, the term ‘common
14 carrier’ means—

15 “(1) a corporation engaged in the furnishing or sale
16 of transportation by motor vehicle, except by municipal
17 or suburban transit system, if the rates for such furnish-
18 ing or sale, as the case may be, have been established
19 or approved by a State or political subdivision thereof,
20 by an agency or instrumentality of the United States,
21 by a public service or public utility commission or other
22 similar body of the District of Columbia or of any State
23 or political subdivision thereof.

24 “(2) (A) a corporation engaged as a common car-

1 rier in the furnishing or sale of transportation by railroad,
2 if subject to the jurisdiction of the Interstate Commerce
3 Commission; or

4 “(B) a railroad corporation subject to part I of this
5 Act if substantially all of its railroad properties have
6 been leased to another such railroad corporation or
7 corporations; or

8 “(C) a common parent corporation which is a com-
9 mon carrier by railroad subject to part I of this Act.

10 “(3) a corporation engaged in the furnishing or sale
11 of transportation by common carrier by water, subject to
12 the jurisdiction of the Interstate Commerce Commission
13 under part III of this Act, or subject to the jurisdiction of
14 the Federal Maritime Commission or the Federal Mari-
15 time Board under the Shipping Act of 1916, as amended,
16 and the Intercoastal Shipping Act of 1933; and

17 “(4) a corporation engaged in the business of freight
18 forwarding and subject to the jurisdiction of the Inter-
19 state Commerce Commission under part IV of this Act.

20 For the purposes of this section, corporations which
21 supply equipment or other property to ‘common carriers’
22 as defined herein, and the majority of whose stock is owned
23 by such common carriers, shall be considered ‘common
24 carriers’.

1 **"TERMINATION OF AUTHORITY**

2 **"SEC. 619.** Except with respect to such applications as
3 may then be pending, the authority granted by this part
4 shall terminate at the close of June 30, 1983: *Provided,*
5 That its provisions shall remain in effect for the limited pur-
6 poses of guarantees made by the Secretary and any five-
7 year extensions permitted pursuant to section 607 (b) (1).

8 **"SEPARABILITY CLAUSE**

9 **"SEC. 620.** If any provision of this part or the applica-
10 tion thereof to any person or circumstance is held invalid, the
11 validity of the remainder of this part, and the application
12 of such provision to other persons or circumstances, shall not
13 be affected."

14 **SEC. 103. ESTABLISHMENT OF A RAILROAD EQUIPMENT**
15 **OBLIGATION INSURANCE FUND, DEPARTMENT**
16 **OF TRANSPORTATION.**

17 The Interstate Commerce Act, as amended, is amended
18 by inserting immediately after part VI the following new
19 part:

20 **"PART VII**

21 **"PURPOSE**

22 **"SEC. 701.** The purpose of this part is to assist railroads,
23 and their car furnishing subsidiaries and leasing companies in
24 acquiring and utilizing rolling stock, and thereby encourage
25 the maintenance and growth of a private national transporta-

1 tion system adequate to meet the needs of the commerce of
2 the United States, and of the national defense.

3 "DEFINITIONS

4 "SEC. 702. For the purposes of this part—

5 "(1) 'Secretary' means the Secretary of Transporta-
6 tion.

7 "(2) 'Railroad' means a common carrier by railroad, as
8 defined in section 1 (3) of this Act, as amended, and includes,
9 where determined appropriate by the Secretary, any railroad
10 controlled by a railroad within the meaning of section 1 (3)
11 (b) of this Act.

12 "(3) 'Car furnishing subsidiary' means a corporation at
13 least 80 per centum of the voting stock of which is owned by
14 one or more railroads and which furnishes rolling stock to
15 one or more railroads owning the voting stock.

16 "(4) 'Leasing company' means a corporation which
17 leases rolling stock to one or more railroads.

18 "(5) 'Rolling stock' means new or rebuilt standard
19 gage railroad freight cars, including cabooses, suitable for
20 use by more than one railroad in normal interchange under
21 the Interchange Rule of the Association of American Rail-
22 roads, and standard gage railroad locomotives.

23 "(6) 'Equipment obligations' means bonds, notes, con-
24 ditional sale agreements, equipment trust certificates, and

1 other obligations issued or guaranteed by railroads or car
2 furnishing subsidiaries to finance or refinance rolling stock.

3 “(7) ‘Holder’ means the holder of an equipment obliga-
4 tion, except that where a bank or trust company is acting as
5 agent or trustee for the holder of the equipment obligation,
6 the bank or trust company shall be deemed to be the holder.

7 “(8) ‘Obligor’ includes the original borrower under an
8 equipment obligation and his successors and assigns approved
9 by the Secretary. An obligor must be a railroad or car fur-
10 nishing subsidiary.

11 **“FEDERAL RAILROAD EQUIPMENT OBLIGATION INSURANCE**
12 **FUND**

13 “SEC. 703. There is created a Federal Railroad Equip-
14 ment Obligation Insurance Fund (hereafter in this part re-
15 ferred to as the ‘fund’) which shall be used by the Sec-
16 retary as a revolving fund for the purpose of carrying
17 out sections 704 through 707 of this part. Moneys in the
18 fund shall be deposited in the Treasury of the United States
19 to the credit of the fund or invested in bonds or other obliga-
20 tions of, or guaranteed as to principal and interest by, the
21 United States for the account of the fund.

22 **“AUTHORIZATION TO INSURE EQUIPMENT OBLIGATIONS**

23 “SEC. 704. (a) The Secretary is authorized to insure
24 the interest on, and the unpaid principal balance of, any
25 equipment obligation offered to him which he determines is

1 eligible for insurance under this part. The Secretary also
2 may make commitments to insure any equipment obligation
3 prior to the date of execution or disbursement thereon. Such
4 insurance and commitments shall be extended in such form,
5 on such terms and conditions, and pursuant to such regula-
6 tions, as the Secretary considers appropriate and which are
7 not inconsistent with the provisions of this part.

8 “(b) Each insurance contract made under this section
9 shall run to and be for the benefit of the holder of the
10 equipment obligation.

11 “(c) The aggregate unpaid principal amount of equip-
12 ment obligations insured under this part shall not exceed
13 \$3,000,000,000 at any one time.

14 “(d) Each equipment obligation insured under this sec-
15 tion shall bear interest (exclusive of premium charges for
16 insurance and service charges) at a rate not to exceed such
17 per centum per annum on the principal obligation outstand-
18 ing which the Secretary determines to be reasonable taking
19 into account the range of interest rates prevailing in the
20 private market for similar obligations.

21 “LIMITATIONS AND CONDITIONS; PREMIUM CHARGES

22 “SEC. 705. (a) Before insuring any equipment obliga-
23 tion under section 704 of this part, the Secretary shall find
24 in writing that—

1 “(1) the equipment obligation is secured by rolling
2 stock to be financed or refinanced thereby;

3 “(2) the terms of the equipment obligation require
4 full payment within fifteen years from the date thereof;

5 “(3) the financing or refinancing of the rolling
6 stock is justified by the present and future demand for
7 transportation services to be rendered by the railroad for
8 which the rolling stock is procured;

9 “(4) the common carrier operations of the railroad
10 are sufficiently efficient at the date of any such financing
11 or refinancing to assure economic utilization of any
12 rolling stock in which the obligor then has a beneficial
13 interest or in which the obligor may obtain such an
14 interest, as a consequence of such financing or
15 refinancing;

16 “(5) the purchase of the rolling stock will contrib-
17 ute toward a national car supply adequate to meet the
18 needs of shippers and the economy;

19 “(6) the probable value of the rolling stock will
20 provide reasonable protection to the United States in
21 the event of repossession of the rolling stock by the
22 holder of any equipment obligation insured under this
23 part.

24 “(b) The Secretary shall fix a premium charge for the
25 insurance of equipment obligations under this part of not

1 to exceed 1 per centum per annum of the principal
2 amount of the equipment obligation outstanding. Premium
3 payments shall be made when moneys are first advanced
4 by the holder under the equipment obligation and on each
5 anniversary date thereafter.

6 “(c) All moneys received under sections 703 through
7 707 of this part shall be deposited in the fund. Not to exceed
8 5 per centum of the sums collected each year under sub-
9 section (b) of this section may be used to pay administra-
10 tive expenses incurred by the Secretary incident to the ad-
11 ministration of sections 703 through 707 of this part.

12 “(d) The total number of rebuilt freight cars financed
13 pursuant to the provisions of this part shall not exceed one-
14 third of the total number of all cars financed pursuant thereto.

15 “ISSUANCE OF NOTES OR OBLIGATIONS

16 “SEC. 706. (a) If at any time the moneys in the fund
17 are not sufficient to pay any amount the Secretary is required
18 to pay under an agreement made under section 704 of this
19 part, the Secretary is authorized to issue to the Secretary of
20 the Treasury notes or other obligations in such forms and de-
21 nominations, bearing such maturities, and subject to such
22 terms and conditions as may be prescribed by the Secretary,
23 with the approval of the Secretary of the Treasury. The notes
24 or other obligations shall bear interest at a rate determined
25 by the Secretary of the Treasury, taking into consideration

1 the current average market yield on outstanding marketable
2 obligations of the United States on comparable maturities
3 during the month preceding the issuance of such notes or
4 other obligations. The Secretary of the Treasury is author-
5 ized and directed to purchase any notes and other obligations
6 to be issued hereunder and for such purpose he is authorized
7 to use as a public debt transaction the proceeds from the sale
8 of any securities issued under the Second Liberty Bond Act,
9 as amended, and the purposes for which securities may be
10 issued under such Act, as amended, are extended to include
11 any purchases of such notes and obligations. The Secretary
12 of the Treasury may at any time sell any of the notes or other
13 obligations acquired by him under this section. All redemp-
14 tions, purchases, and sales by the Secretary of the Treasury
15 of such notes or other obligations shall be treated as public
16 debt transactions of the United States. Funds borrowed under
17 this section shall be deposited in the fund and redemptions
18 of such notes and obligations shall be made by the Secretary
19 from the fund.

20 “(b) Notwithstanding any other provisions of law relat-
21 ing to the acquisition, handling, or disposal of property by
22 the United States, the Secretary shall have the right in his
23 discretion to perform such acts as may be necessary to com-
24 plete, recondition, renovate, repair, maintain, and manage,
25 lease, rent, sell, or otherwise dispose of any property or other

1 interests acquired by him under an agreement made under
2 section 704 of this part.

3 “(c) Any contract or commitment of insurance entered
4 into by the Secretary under the provisions of this part shall
5 not be terminated, canceled, or otherwise revoked, except
6 as provided by the terms and conditions prescribed by the
7 Secretary under section 704 of this part; and shall be con-
8 clusive evidence that the obligation complies fully with the
9 provisions of this part and of the approval and legality of
10 the principal amount, interest rate, and all other terms of the
11 obligation; and any contract or commitment of insurance so
12 entered into shall be valid and incontestable in the hands
13 of a holder from the date as of which such contract or com-
14 mitment is entered into, except for fraud, duress, mutual mis-
15 take of fact, or material misrepresentation on the part of
16 such holder.

17 “MODIFICATIONS

18 “SEC. 707. The Secretary may consent to the modifica-
19 tion of the provisions of an equipment obligation as to rate
20 of interest, time of payment of interest or principal, security,
21 or the terms and conditions of any contract or commitment
22 of insurance which he shall have entered into pursuant to
23 this part whenever he finds in writing that such modifica-
24 tion is equitable. However, such consent shall not be given
25 unless any consent of the holder, which may be required

1 pursuant to the provisions of any equipment obligation, shall
2 have first been obtained.”.

3 **SEC. 104. ROLLING STOCK SCHEDULING AND CONTROL**
4 **SYSTEMS.**

5 (a) The Secretary is authorized to assist in the design
6 of a national rolling stock information service and to con-
7 tract with and provide technical and financial assistance
8 to individual railroads or a group of railroads working to-
9 gether, including the sharing of costs and the funding in part
10 of demonstration projects, to assist in the establishment of a
11 national rolling stock information system of approved de-
12 sign. Such national rolling stock information system shall
13 use computer and communication techniques and equipment
14 which will facilitate equitable distribution and efficient and
15 economical utilization of rolling stock. Such system shall be
16 capable of furnishing information about all rolling stock
17 owned directly or indirectly by the railroads such as the
18 Secretary and railroads determine to be useful for the equi-
19 table distribution and efficient and economical utilization of
20 rolling stock. The Secretary shall consult with shippers, rail-
21 roads, and the Interstate Commerce Commission, before
22 finally approving the design of the system. The Secretary
23 shall prescribe rules to insure the confidentiality of certain
24 types of competitive information supplied for use in con-
25 nection with the system.

1 (b) Financial assistance under this section shall be
2 approved by the Secretary only where he finds that the
3 individual project, program, or activity on which such funds
4 are to be expended—

5 (1) is consistent with development or operation of
6 a national information system;

7 (2) can reasonably be expected to promote tech-
8 nological advance or more rapid development and estab-
9 lishment of a national information system; or

10 (3) will assist in the establishment of part or parts
11 of the national system which are essential to its effective
12 use and which needs financial assistance for timely devel-
13 opment consistent with development of a national system.

14 (c) The Secretary shall report semiannually to the
15 Congress with respect to the progress made by railroads in
16 implementing the national system provided for in subsection
17 (a). Such report shall include recommendations for such
18 additional funding as may be necessary to make the national
19 system fully effective.

20 (d) In exercising his authority under this section, the
21 Secretary may enter into agreements or contracts without
22 regard to section 3709 of the Revised Statutes, as amended
23 (41 U.S.C. 5).

24 (e) Persons contracting with the Secretary with respect
25 to the design of a national or individual rolling stock infor-

1 mation system or the use of information supplied by such
2 system shall be and are hereby relieved from all prohibitions
3 of existing laws, including the antitrust laws of the United
4 States, to the extent necessary to facilitate carrying out the
5 purposes of this Act.

6 (f) There is authorized to be appropriated to the Sec-
7 retary out of money in the Treasury not otherwise appro-
8 priated, the sum of \$35,000,000 for purposes of this section,
9 such amount to remain available until expended.

10 **TITLE II—PROVISIONS RELATING TO DIS-** 11 **CRIMINATORY STATE TAX PRACTICES**

Sec. 201. Discriminatory State taxation.

12 **SEC. 201. DISCRIMINATORY STATE TAXATION.**

13 The Interstate Commerce Act, as amended, is amended
14 by inserting after section 26 of part I a new section 27 as
15 follows:

16 "SEC. 27. (a) Notwithstanding the provisions of sec-
17 tion 202 (b), the following action by any State, or subdi-
18 vision or agency thereof, whether such action be taken
19 pursuant to a constitutional provision, statute, or adminis-
20 trative order or practice, or otherwise, is hereby declared
21 to constitute an unreasonable and unjust discrimination
22 against and an undue burden upon interstate commerce and
23 is hereby forbidden and declared to be unlawful:

24 "(1) the assessment (but only to the extent of any

1 portion based on excessive values as hereinafter de-
2 scribed), for purposes of a property tax levied by any
3 taxing district, of transportation property owned or used
4 by any common or contract carrier subject to economic
5 regulation pursuant to the provisions of this part, part
6 II, part III or part IV of this Act at a value which
7 bears a higher ratio to the true market value of such
8 transportation property than the assessed value of all
9 other industrial and commercial property in the assess-
10 ment jurisdiction of any State in which is included such
11 taxing district and subject to a property tax levy bears
12 to the true market value of all such other commercial
13 and industrial property;

14 “(2) the collection of any tax on the portion of such
15 assessment so declared to be unlawful; or

16 “(3) the collection of any ad valorem property tax
17 on such transportation property at a tax rate higher than
18 the tax rate generally applicable to commercial and in-
19 dustrial property in the taxing district.

20 “(b) As used in this section—

21 “(1) The term ‘transportation property’ means
22 transportation property as defined in the regulations of
23 the Interstate Commerce Commission.

24 “(2) The term ‘assessment jurisdiction’ means a
25 geographical area, such as a State or a county, city, or

1 township within a State, which is a unit for purposes of
2 determining assessed value of property for ad valorem
3 taxation.

4 “(3) The term ‘commercial and industrial prop-
5 erty’ means property devoted to a commercial or indus-
6 trial use, provided that such term shall not include land
7 used primarily for agricultural purposes or primarily for
8 the pupose of growing timber.

9 “(4) The term ‘all other property’ means all prop-
10 erty, real or personal, other than land used primarily for
11 agricultural purposes or primarily for the purpose of
12 growing timber.

13 “(c) In the event that the ratio of the assessed value
14 of all other commercial and industrial property in the as-
15 sessment jurisdiction to the true market value of all such
16 other commercial and industrial property cannot be estab-
17 lished through the random-sampling method known as a
18 sales assessment ratio study, conducted in accordance with
19 statistical principles applicable to such studics. to the satisfac-
20 tion of the court hearing the complaint that transportation
21 property has been or is being assessed or taxed in contra-
22 vention of the provisions of this section. then it shall be
23 unlawful to assess such transportation property at a value
24 which bears a higher ratio to the true market value of such
25 transportation property than the assessed value of all other

1 property in the assessment jurisdiction in which is included
2 such taxing district and subject to a property tax levy bears
3 to the true market value of all such other property; or to
4 collect any ad valorem property tax on such transportation
5 property at a tax rate higher than the tax rate generally
6 applicable to taxable property in the taxing district.

7 “(d) Notwithstanding the provisions of section 1341,
8 title 28, United States Code, or of the constitution or laws
9 of any State, the district courts of the United States shall
10 have jurisdiction, upon complaint and after hearing, to issue
11 such writs of injunction or other property process, mandatory
12 or otherwise, as may be necessary to restrain any State, or
13 subdivision or agency thereof, or any persons from doing
14 anything or performing any act declared by subsection (a)
15 to be unlawful: *Provided, however,* That such jurisdiction
16 shall not be exclusive of that which any Federal or State
17 court may otherwise have: *And provided further,* That the
18 provisions of this section shall not become effective until
19 three years after the date of its enactment: *And provided*
20 *further,* That no relief shall be granted hereunder unless the
21 assessment percentage applied to carrier transportation prop-
22 erty exceeds by at least 5 per centum the assessment per-
23 centage applied to all other property in the assessment
24 jurisdiction.”.

1 **TITLE III—PROCEDURES FOR ABANDON-**
2 **MENT OF NONPRODUCTIVE RAIL FA-**
3 **CILITIES**

Sec. 301. Short title.

Sec. 302. Expeditious administrative procedures for abandonment of non-productive facilities.

4 **SEC. 301. SHORT TITLE.**

5 This title may be cited as "Abandonment of Nonpro-
6 ductive Rail Facilities Act".

7 **SEC. 302. EXPEDITIOUS ADMINISTRATIVE PROCEDURES**
8 **FOR ABANDONMENT OF NONPRODUCTIVE FA-**
9 **CILITIES.**

10 (a) Paragraphs (18), (19), (20), (21), and (22)
11 of section 1 of the Interstate Commerce Act (49 U.S.C. 1
12 (18) et seq.) are amended to read as follows:

13 "(18) No carrier by railroad subject to this part shall
14 undertake the extension of its line of railroad, or the con-
15 struction of a new line of railroad, or shall acquire or operate
16 any line of railroad, or extension thereof, or shall engage in
17 transportation under this part over or by means of such addi-
18 tional or extended line of railroad, unless and until there shall
19 first have been obtained from the Commission a certificate
20 that the present or future public convenience and necessity
21 require or will require the construction, or operation, or con-
22 struction and operation, of such additional or extended line
23 of railroad. Nothing in this paragraph or in section 5 shall

1 be considered to prohibit the making of contracts between
2 carriers by railroad subject to this part, without the approval
3 of the Commission, for the joint ownership or joint use of
4 spur, industrial, team, switching, or side tracks.

5 “(19) The application for and issuance of any such
6 certificate shall be under such rules and regulations as to
7 hearings and other matters as the Commission may from
8 time to time prescribe, and the provisions of this part shall
9 apply to all such proceedings. Upon receipt of any applica-
10 tion for such certificate the Commission shall cause notice
11 thereof to be given to and a copy filed with the Governor of
12 each State in which such additional or extended line of rail-
13 road is proposed to be constructed or operated with the right
14 to be heard as hereinafter provided with respect to the hear-
15 ing of complaints or the issuance of securities; and said
16 notice shall also be published for three consecutive weeks in
17 some newspaper of general circulation in each county in or
18 through which said line of railroad is proposed to be con-
19 structed or operated.

20 “(20) The Commission shall have power to issue such
21 certificate as prayed for, or to refuse to issue it, or to issue it
22 for a portion or portions of a line of railroad, or extension
23 thereof, described in the application, and may attach to the
24 issuance of the certificate such terms and conditions as in its
25 judgment the public convenience and necessity may require.

1 From and after issuance of such certificate, and not before,
2 the carrier by railroad may, without securing approval other
3 than such certificate, comply with the terms and conditions
4 contained in or attached to the issuance of such certificate
5 and proceed with the construction or operation covered
6 thereby.

7 “(21) The Commission may, after hearing, in a pro-
8 ceeding upon complaint or upon its own initiative without
9 complaint, authorize or require by order any carrier by rail-
10 road subject to this part, party to such proceeding, to pro-
11 vide itself with safe and adequate facilities for performing as
12 a common carrier its car service as that term is used in this
13 part, and to extend its line or lines: *Provided*, That no such
14 authorization or order shall be made unless the Commission
15 finds, as to such extension, that it is reasonably required in
16 the interest of public convenience and necessity, or as to
17 such extension or facilities that the expense involved therein
18 will not impair the ability of the carrier to perform its duty
19 to the public. Any carrier subject to this part which refuses
20 or neglects to comply with any order of the Commission
21 made in pursuance of this paragraph shall be liable to a pen-
22 alty of \$100 for each day during which such refusal or
23 neglect continues, which shall accrue to the United States
24 and may be recovered in a civil action.

25 “(22) No carrier by railroad subject to this part shall

1 abandon all or any portion of a line of railroad, or the
2 operation thereof, except in accordance with this paragraph.
3 A carrier or carriers may file with the Commission a notice
4 to abandon a line of railroad, or the operation thereof, which
5 notice shall be under such rules and regulations as the Com-
6 mission may from time to time prescribe, and the provisions
7 of this part shall apply to all such proceedings. Abandon-
8 ments pursuant to such notice shall be governed by the
9 provisions of this paragraph, the laws or constitution of
10 any State, or the decision or order of, or the pendency of any
11 proceeding before, any court or State authority to the con-
12 trary notwithstanding. The carrier or carriers filing notice
13 with the Commission pursuant to this paragraph shall file
14 simultaneously with the Commission a certificate of service
15 of the notice by mail upon the Governor of each State in
16 which all or any portion of the line of railroad, or the opera-
17 tion thereof, is proposed to be abandoned, and a certificate
18 of posting of notice in every station on such line and a cer-
19 tificate that notice has been published for three consecutive
20 weeks in a newspaper of general circulation in each county
21 in or through which said line of railroad operates. Notice
22 shall also be given to all shippers and receivers who have
23 used the line in the preceding eighteen months. All notices
24 provided for in this paragraph shall be filed with the Com-
25 mission at least ninety days in advance of any abandon-

1 ment of any line of railroad or operation thereof pursuant to
2 such notice and to this paragraph. Upon the filing of any
3 notice pursuant to this paragraph, the Commission shall dur-
4 ing said forty-five days' notice period upon complaint of an
5 aggrieved party, or may upon its own initiative, enter upon
6 an investigation of the action proposed in the notice. If no
7 such investigation is instituted, the Commission shall issue a
8 certificate at the expiration of the ninety days' notice period
9 that public convenience and necessity permit the abandon-
10 ment proposed in the notice. If an investigation is instituted,
11 the Commission, by order served upon the carrier or carriers
12 affected thereby at least ten days prior to the day on which
13 the abandonment proposed in the notice would otherwise be-
14 come effective, shall postpone the abandonment in whole or
15 in part, pending hearing and such investigation, but not for
16 a longer period than six months beyond the date when such
17 abandonment would otherwise have become effective. Any
18 investigation instituted under this paragraph shall include
19 full public hearings at a point or points on or reasonably
20 adjacent to the line proposed to be abandoned. At the
21 expiration of the six-month suspension period, if any, the
22 abandonment proposed in the notice shall become effective
23 unless, prior to such expiration, the Commission shall have
24 issued an order finding such abandonment not consistent with
25 public convenience and necessity. In determining whether

1 to make such finding the Commission shall consider the
2 following: losses in operating the line proposed to be aban-
3 doned, as measured by costs of service including maintenance
4 cost and such repairs or improvements necessary to continue
5 the line at a physical standard necessary to provide safe,
6 reliable, and efficient service; extent of actual use of and
7 need for the line by shippers or receivers; and the develop-
8 ment of an efficient and economical transportation system:
9 *Provided, however, That no such finding shall be made*
10 *unless continued operation of the line proposed to be aban-*
11 *doned will produce sufficient revenue to cover the relevant*
12 *variable costs of handling traffic to, from, and beyond the*
13 *line: And provided further, That said finding shall be sub-*
14 *ject to the provisions of paragraph (26) of this section.*
15 Partial changes in operation or service shall be treated in
16 accordance with paragraph (4) of this section. In any in-
17 vestigation hereunder, the burden of proof shall be on the
18 carrier.”.

19 (b) Section 1 of part I of the Interstate Commerce
20 Act (49 U.S.C. 1) is amended by adding at the end thereof
21 the following new paragraphs:

22 “(23) Any construction, operation, or abandonment
23 contrary to the provisions of paragraph (18), (19), or
24 (22) of this section may be enjoined by any United States
25 district court of competent jurisdiction at the suit of the

1 United States, the Commission, any commission or regulat-
2 ing body of the State or States affected, or any party in
3 interest; and any carrier which, or any director, officer, re-
4 ceiver, operating trustee, lessee, agent, or person, acting for
5 or employed by such carrier, who, knowingly authorizes,
6 consents to, or permits any violation of the provisions of
7 paragraph (18), (19), or (22) of this section shall be
8 fined not more than \$5,000 or imprisoned not more than
9 3 years, or both.

10 “(24) The authority of the Commission conferred by
11 paragraphs (18) to (22) of this section, both inclusive, shall
12 not extend to the construction, acquisition, or abandon-
13 ment of spur, industrial, team, switching, or side tracks, lo-
14 cated or to be located wholly within one State, or of street,
15 suburban, or interurban electric railways, which are not
16 operated as a part or parts of a general railroad system of
17 transportation.

18 “(25) Within one hundred and twenty days after enact-
19 ment of this paragraph, each railroad shall prepare and file
20 with the Commission, which shall publish and make avail-
21 able to the public, a full and complete diagram of its trans-
22 portation system describing in particular those rail lines on
23 which less than thirty-five carloads originated or terminated
24 per mile during the prior calendar year. A railroad shall

1 amend its diagram from time to time, or as the Commission
2 shall require, to reflect any changes in this system.

3 : “(26) In the event the Commission shall during the six
4 months provided for in paragraph (22) make a finding that
5 a hearing and investigation is authorized under paragraph
6 (22), it shall also make a determination, after said hearing
7 and investigation, whether revenues attributable to the line,
8 lines, or operations in question may become sufficient to cover
9 the relevant variable costs referred to in paragraph (22) as
10 a result of improved operating efficiencies; rate adjustments,
11 or direct financial compensation from users and/or any State
12 or political subdivision thereof or changed circumstances. In
13 the event the Commission shall determine that circumstances
14 referred to in this paragraph warrant an additional suspension
15 of the certificate, then the Commission shall not issue the
16 certificate but shall retain jurisdiction for an additional six
17 months to determine if the paragraph (22) standards have
18 been met. If the paragraph (22) standards have still not
19 been met during the additional six-month period, then the
20 certificate of abandonment shall be issued.

21 : “(27) Any carrier undertaking the abandonment of a
22 line of railroad or a portion thereof or the operations there-
23 over pursuant to the provisions of this section, shall be re-
24 quired to protect the interests of employees affected by such

1 abandonment. Such protective arrangements shall be those
2 agreed to by the carrier and the representatives of its em-
3 ployees or, in the absence of such agreement, as the Com-
4 mission shall determine. Such protective arrangements shall
5 be included in an order to be issued by the Commission at
6 the end of the ninety days' notice period or the six
7 months' suspension period as the case may be. Any such
8 arrangements shall protect individual employees for a period
9 of at least six years (or a lesser period equivalent to their
10 employment with the carrier) from the date first affected
11 against a worsening of their positions with respect to their
12 employment and shall include, without being limited to,
13 such provisions as may be necessary (A) to provide for
14 notice and negotiation and execution of implementing agree-
15 ments prior to the interests of employees being affected:
16 *Provided, however,* That where such implementing agree-
17 ment has not been executed within thirty days after the
18 date on which such abandonment became effective either
19 party may submit for binding arbitration any unresolved ques-
20 tions in connection therewith, the arbitration decision to be
21 rendered if possible within thirty days thereafter, but if such
22 decision is for any reason delayed beyond said thirty days,
23 the rights of the parties to such arbitration shall not be
24 affected; (B) for the preservation of compensation (includ-
25 ing subsequent wage increases), rights, privileges, and bene-

1 fits (including fringe benefits such as pensions, hospitaliza-
 2 tion, vacations, and the like, under the same conditions and
 3 so long as such benefits continue to be accorded to other
 4 employees on the home carrier in active service or on fur-
 5 lough as the case may be) to such employees under existing
 6 collective bargaining agreements or otherwise; and (C) to
 7 provide for the arbitration of disputes arising out of the pro-
 8 tective arrangements which cannot be settled by the parties.
 9 In such arbitrations the burden shall be upon the carrier
 10 party thereto to prove that the employee was not affected
 11 by the abandonment. In no event shall said arrangements
 12 provide benefits less than those established pursuant to section
 13 5 (2) (f) of this Act.”

14 **TITLE IV—PROVISIONS RELATING TO COM-** 15 **PETITIVE EQUITY**

Sec. 401. Short title.

Sec. 402. Establishment of minimum compensatory rates.

Sec. 403. Development and implementation of adequate rate levels.

Sec. 404. Development and implementation of interim rate adjustments.

Sec. 405. Report filing and rate publication extension to water transport
 of dry bulk commodities.

Sec. 406. Establishment of nondiscriminatory rates for the transportation
 of recycled solid waste materials.

16 **SEC. 401. SHORT TITLE.**

17 (a) This title may be cited as the “Competitive Equity
 18 Act of 1973”.

19 (b) **AMENDMENTS TO INTERSTATE COMMERCE ACT.—**

20 Except as otherwise expressly provided, whenever in this
 21 title an amendment or repeal is expressed in terms of an

1 amendment to, or repeal of, a section or other provision,
2 the reference shall be considered to be made to a section or
3 other provision of the Interstate Commerce Act, as amended.

4 **SEC. 402. ESTABLISHMENT OF MINIMUM COMPENSATORY**
5 **RATES.**

6 Sections 15 (a) (2), 216 (i), 307 (f), and 406 (d) of
7 the Interstate Commerce Act, as amended, are each amended
8 by adding at the end of each such section the following: "The
9 Commission shall, on a continuing basis, investigate and iden-
10 tify traffics which are moving at rates below the variable
11 costs, as determined by the Commission, incurred in handling
12 the traffics to which such rates apply and, within procedures
13 established under this Act, cause such rates to be promptly
14 brought to at least such variable costs."

15 **SEC. 403. DEVELOPMENT AND IMPLEMENTATION OF AD-**
16 **EQUATE RATE LEVELS.**

17 Section 15 (a) (2), section 216 (i), and section 307 (f)
18 of the Interstate Commerce Act, as amended, are each
19 amended by adding at the end of each such section the fol-
20 lowing: "The Commission shall, within twenty-four
21 months of the passage of this sentence, promulgate and
22 thereafter continually maintain standards and procedures for
23 the determination of revenue levels adequate under honest,
24 economical, and efficient management to cover operating and
25 capital costs, including a fair, reasonable, and economic profit.

1 The costs to be covered pursuant to such standards shall
2 include provision for depreciation and for return on invest-
3 ment based upon the present economic value of equipment
4 and facilities used and useful in supplying transportation serv-
5 ice, and shall reflect current costs of obtaining capital. Present
6 economic value, as used in this section, shall mean the cur-
7 rent cost of providing the productive capability of equipment
8 and facilities used and useful in supplying transportation
9 service, with due allowance for price changes and for tech-
10 nological advances subsequent to the date of acquisition or
11 construction of equipment and facilities currently in service.”.

12 **SEC. 404. DEVELOPMENT AND IMPLEMENTATION OF IN-**
13 **TERIM RATE ADJUSTMENTS.**

14 Section 15 (a) (2) , section 216 (i) , and section 307 (f)
15 of the Interstate Commerce Act, as amended, are each amend-
16 ed by adding at the end of each such section the following
17 new language: “The Commission shall, within twelve months
18 of the passage of this sentence, promulgate and thereafter con-
19 tinually maintain standards and procedures for the authoriza-
20 tion of interim rate level adjustments pending any new
21 determination of adequacy of revenue levels, and such interim
22 adjustments shall be approved by the Commission whenever
23 and to the extent justified by experienced, or demonstrably
24 certain, increases in cost.”.

1 SEC. 405. REPORT FILING AND RATE PUBLICATION EX-
2 TENSION TO WATER TRANSPORT OF DRY BULK
3 COMMODITIES.

4 (a) Section 303 (b) is amended by adding a comma
5 after the word "part" in the first sentence and inserting the
6 following language immediately thereafter: "except the
7 provisions of sections 304, 306, and 313 and, in the case of
8 any violation thereof or of any rule, regulation, require-
9 ment, or order thereunder, or of failure to comply therewith,
10 the provisions of sections 316 and 317,".

11 (b) Section 303 (c) is amended by adding a comma
12 after the word "part" in the first sentence and inserting the
13 following language immediately thereafter: "except the pro-
14 visions of sections 304, 306, and 313 and, in the case of
15 any violation thereof or of any rule, regulation, requirement,
16 or order thereunder, or of failure to comply therewith, the
17 provisions of sections 316 and 317,".

18 (c) Section 304 (b) is amended by striking out the first
19 sentence thereof and inserting in lieu thereof the following:
20 "The Commission shall have authority, for purposes of the
21 administration of the provisions of this part, to inquire into
22 and report on the management of the business of water
23 carriers, including those wholly or partially engaged in trans-
24 portation, exempt under either section 303 (b) or 303 (c),
25 and to inquire into and report on the management of the

1 business of persons controlling, controlled by, or under
2 a common control with such water carriers, to the extent
3 that the business of such persons is related to the man-
4 agement of the business of one or more such carriers, and
5 the Commission shall keep itself informed as to the manner
6 and method in which the same are conducted.”.

7 (d) Section 306 (c) is amended by striking out “sub-
8 ject to this part” and inserting in lieu thereof “for which a
9 tariff has been filed”.

10 (e) Section 306 (e) is amended by striking out the
11 second and third sentences thereof and inserting in lieu
12 thereof the following: “It shall be the duty of every
13 contract carrier by water to file with the Commission,
14 publish and keep open for public inspection, in the form
15 and manner prescribed by the Commission, schedules con-
16 taining the actual rates or charges of such carrier for the
17 transportation of property in interstate or foreign commerce,
18 and any rule, regulation, or practice affecting such rates or
19 charges and the value of service thereunder. No contract
20 carrier by water, unless otherwise provided by this part, shall
21 engage in transportation subject to this part unless the rates
22 or charges actually maintained and charged have been pub-
23 lished, filed, and posted in accordance with the provisions of
24 this part.”.

25 (f) Section 313 (a) is amended by inserting after the

1 word "associations" where it first appears in the first sen-
2 tence thereof the following: "including those wholly or
3 partially engaged in transportation exempt under either
4 section 303 (b) or 303 (c)".

5 **SEC. 406. ESTABLISHMENT OF NONDISCRIMINATORY**
6 **RATES FOR THE TRANSPORTATION OF RE-**
7 **CYCLED SOLID WASTE MATERIALS.**

8 (a) The Congress hereby finds that, in order to accom-
9 plish the purposes of the Solid Waste Disposal Act of 1965,
10 as amended by the Resource Recovery Act of 1970, it is
11 essential to establish and maintain fair, reasonable, and non-
12 discriminatory transportation rates which will facilitate and
13 encourage broader utilization of recycled solid waste mate-
14 rials and promote conservation of vital natural resources.

15 (b) The Interstate Commerce Commission and the
16 Federal Maritime Commission, within the maximum scope
17 of their respective jurisdictions under the Interstate Com-
18 merce Act, the Shipping Act of 1916, and the Intercoastal
19 Shipping Act of 1933, shall, within twenty-four months after
20 the date of enactment of this Act and on a continuing basis
21 thereafter—

22 (1) investigate and formally identify all rates
23 charged by transportation carriers subject to their re-
24 spective jurisdictions for the transportation of recycled
25 solid waste materials and shall, in each case, determine

1 whether the rates charged and the terms and conditions
2 of transportation for such materials are fair and reason-
3 able, and whether they unjustly discriminate against
4 the movement or shipment in commerce of recycled solid
5 waste materials and in favor of competing virgin natural
6 resource materials or commodities; and

7 (2) issue appropriate orders in all cases where
8 the rates charged or terms and conditions of transpor-
9 tation applicable to recycled solid waste materials are
10 found to be unfair, unreasonable, or discriminatory pur-
11 suant to which such rates and conditions of transpor-
12 tation will be effectively canceled and repealed and
13 replaced by rates, tariffs, and conditions of transpor-
14 tation which are found to be fair, reasonable, and nondis-
15 criminatory; and

16 (3) promulgate and maintain standards, rules, and
17 procedures for the establishment of minimum adequate
18 transportation rate levels for the movement of recycled
19 solid waste materials which will facilitate and encourage
20 the broader utilization of such materials; and

21 (4) file reports with the President and the Con-
22 gress regarding the results of their respective investiga-
23 tions and all actions taken to establish minimum, fair,
24 reasonable, and nondiscriminatory rates for the trans-
25 portation of recycled solid waste materials.

7 **TITLE V—AGREEMENTS BETWEEN**
8 **CARRIERS**

Sec. 504. Study of rate bureaus.

“(11) Within one hundred and twenty days after a rule, rate, or charge is docketed with a conference, bureau, committee, or other organization, established or continued pursuant to any agreement approved under this section, such rule, rate, or charge shall finally be disposed by said conference, bureau, committee, or other organization.”.

1 **SEC. 503. SINGLE LINE RATES.**

2 Paragraph (6) of section 5a of the Interstate Commerce
3 Act (49 U.S.C. 5b) is amended to read as follows:

4 “(6) (a) The Commission shall not approve under this
5 section any agreement which establishes a procedure for the
6 determination of any matter through joint consideration un-
7 less it finds that under the agreement there is accorded to
8 each party the free and unrestrained right to take independent
9 action either before or after any determination arrived at
10 through such procedure, and in no event shall any con-
11 ference, bureau, committee or other organization, established
12 or continued pursuant to any agreement approved under this
13 section, conduct votes on single line rates established by any
14 railroad carrier, regulated by part I of this Act, nor appear in
15 any proceeding before the Commission regarding said single
16 line rate.

17 “(b) The Commission shall not approve under this
18 section any agreement which establishes a procedure for the
19 determination of any matter through joint consideration un-
20 less it finds that under the agreement there is accorded to
21 each party the free and unrestrained right to take inde-
22 pendent action either before or after any determination ar-
23 rived at through such procedure, and no conference, bureau,
24 committee, or other organization established or continued

1 pursuant to any agreement approved by the Commission
2 between motor carriers regulated by part II or freight for-
3 warders regulated by part IV of this Act shall file with the
4 Commission a protest against or request for suspension of any
5 rate, fare, or charge published in any of its tariffs upon the
6 direction of a party to the agreement in the exercise of such
7 party's right of independent action unless such protest or
8 request is supported by facts showing that such rate, fare, or
9 charge appears to be less than the cost of rendering the
10 specific transportation service to which it applies.”.

11 **SEC. 504. STUDY OF RATE BUREAUS.**

12 The Interstate Commerce Commission shall, within
13 twelve months following the enactment of this section, con-
14 duct a proceeding or proceedings in which all interested par-
15 ties may participate pursuant to paragraph (7) of section 5a
16 of the Interstate Commerce Act (49 U.S.C. 5b (7)) of the
17 conference, bureaus, committees, and other organizations
18 established under section 5a (49 U.S.C. 5b) to determine
19 if these rate bureaus and other organizations are preventing
20 an efficient utilization of transportation resources or have
21 established practices which are inconsistent with efficient,
22 flexible, and economic operation. In carrying out the pro-
23 visions of this section, the Commission shall consult with,
24 and give consideration to the views of, the Secretary of
25 Transportation and the Attorney General. A report which

1 shall include recommendations by the Commission shall be
2 transmitted to the Congress during the twelve-month period
3 referred to above.

4 **TITLE VI—REPEAL OF DISCRIMINATORY**
5 **GOVERNMENT RATES**

6 Section 22 of the Interstate Commerce Act (49 U.S.C.
7 22) is amended to read as follows:

8 **“RESTRICTIONS**

9 “SEC. 22. (1) Nothing in this part shall prevent the
10 carriage, storage, or handling of property free or at reduced
11 rates for charitable purposes, or to or from fairs and exposi-
12 tions for exhibition thereat, or the free carriage of destitute
13 and homeless persons transported by charitable societies, and
14 the necessary agents employed in such transportation, or the
15 transportation of persons for the United States Government
16 free or at reduced rates, or the issuance of mileage, excur-
17 sion, or commutation passenger tickets; nothing in this part
18 shall be construed to prohibit any common carrier from
19 giving reduced rates to ministers of religion, or to municipal
20 governments for the transportation of indigent persons, or
21 to inmates of Veterans’ Administration facilities or State
22 homes for disabled volunteer soldiers and of soldiers’ and
23 sailors’ orphan homes, including those about to enter and
24 those returning home after discharge, under arrangements
25 with the boards of managers of said homes; nothing in this

1 part shall be construed to prohibit any common carrier from
2 establishing by publication and filing in the manner pre-
3 scribed in section 6 of this part reduced fares for application
4 to the transportation of (a) personnel of United States armed
5 services or of foreign armed services, when such persons
6 are traveling at their own expense, in uniform of those serv-
7 ices, and while on official leave, furlough, or pass; or (b)
8 persons discharged, retired, or released from United States
9 armed services within thirty days prior to the commence-
10 ment of such transportation and traveling at their own ex-
11 pense to their homes or other prospective places of abode;
12 nothing in this part shall be construed to prevent railroads
13 from giving free carriage to their own officers and employees,
14 or to prevent the free carriage, storage, or handling by a car-
15 rier of the household goods and other personal effects of its
16 own officers or employees when such goods and effects must
17 necessarily be moved from one place to another as a result
18 of a change in the place of employment of such officers or
19 employees while in the service of the carrier, or to prevent
20 the principal officers of any railroad company or companies
21 from exchanging passes or tickets with other railroad com-
22 panies for their officers and employees; nothing in this part
23 contained shall in any way abridge or alter the remedies now
24 existing at common law or by statute, but the provisions of
25 this part are in addition to such remedies; nothing in this

1 part shall be construed to prohibit any common carrier from
2 carrying any totally blind person accompanied by a guide
3 or seeing-eye dog or other guide dog specially trained and
4 educated for that purpose or from carrying a disabled per-
5 son accompanied by an attendant if such person is disabled
6 to the extent of requiring such attendant, at the usual and
7 ordinary fare charged to one person, under such reasonable
8 regulations as may have been established by the carrier;
9 except that, no pending litigation shall in any way be af-
10 fected by this part; and, except that, nothing in this part
11 shall prevent the issuance of joint interchangeable five-
12 thousand-mile tickets, with special privileges as to the amount
13 of free baggage that may be carried under mileage tickets
14 of one thousand or more miles. But before any common
15 carrier, subject to the provisions of this part, shall issue any
16 such joint interchangeable mileage tickets with special privi-
17 leges, as aforesaid, it shall file with the Interstate Commerce
18 Commission as fully with regard to such joint interchange-
19 able mileage tickets as with regard to other joint rates, fares,
20 and charges referred to in said section. It shall be unlawful
21 for any common carrier that has issued or authorized to be
22 issued any such joint interchangeable mileage tickets to de-
23 mand, collect, or receive from any person or persons a
24 greater or less compensation for transportation of persons or
25 baggage under such joint interchangeable mileage tickets

1 than that required by the rate, fare, or charge specified in the
2 copies of the joint tariff of rates, fares, or charges filed with
3 the Commission in force at the time. The provisions of sec-
4 tion 10 of this part shall apply to any violation of the re-
5 quirements of this proviso. Nothing in this part shall prevent
6 any carrier or carriers subject to this part from filing reduced
7 rates for the transportation of property to or from any sec-
8 tion of the country with the object of providing relief in case
9 of earthquake, flood, fire, famine, drought, epidemic, pesti-
10 lence, insurrection, or other calamitous visitation or disaster,
11 if such reduced rates have first been authorized by order of
12 the Commission (with or without a hearing) ; but in any
13 such order the Commission shall (A) define such section,
14 (B) specify the period during which such reduced rates
15 are to remain in effect, and (C) clearly define the class or
16 classes of persons entitled to such reduced rates (in addition,
17 the Commission may specify the circumstances under which
18 individual entities of the class or classes of persons are to be
19 identified) ; except that, such class or classes of persons are
20 those eligible for such aid under circumstances in which a
21 proclamation shall have been issued by authorized agents
22 of the United States or State governments engaging in the
23 relief of distress caused by such calamitous visitation. No
24 findings of unreasonableness, discrimination, preference, prej-
25 udice, or noncompensativeness may be made with regard to

1 shipments made under such rates. Nothing in this part shall
2 prevent any carrier or carriers subject to this part from
3 filing rates, rules, regulations, and charges resulting in re-
4 duced transportation charges to agencies or departments of
5 the United States or State governments, and no finding of
6 discrimination, preference or advantage, or prejudice or
7 disadvantage, may be made with regard thereto, nor shall the
8 provisions of section 4 of this part be applicable thereto.
9 The tariff so involved may be posted and made effective
10 immediately and retroactively; no tariff or rate, fare or
11 charge, or quotation or tender thereof, shall be subject to
12 the suspension provisions of this Act: *Provided*, That such
13 rates, fares, or charges shall not be less than the variable
14 costs of handling such traffic. When it is certified by the
15 United States Government, or any agency or department
16 thereof, that it is necessary to the national security to with-
17 hold disclosure of the movement of certain property or ship-
18 ments and to withhold from public inspection the rates, rules,
19 regulations, or charges under which such property moves,
20 as well as the volume of movements, all such data shall be
21 kept confidential by the carriers and by the Commission.

22 “(2) All quotations or tenders of rates, fares, or charges
23 for the transportation, storage, or handling of property or
24 the transportation of persons for the United States Govern-
25 ment, or any agency or department thereof, including quota-

1 tions or tenders for retroactive application whether negoti-
2 ated or renegotiated after the services have been performed,
3 shall be in writing or confirmed in writing and a copy or
4 copies thereof shall be submitted to the Commission by the
5 carrier or carriers offering such tenders or quotations in
6 the manner specified by the Commission and only upon
7 the submittal of such a quotation or tender made pursuant
8 to an agreement approved by the Commission under section
9 5a of this Act shall the provisions of paragraph (9) of
10 said section 5a apply, but said provisions shall continue to
11 apply as to any agreement so approved by the Commission
12 under which any such quotation or tender (a) was made
13 prior to August 31, 1957 or (b) is on or after August 31,
14 1957 made and for security reasons, as hereinafter pro-
15 vided, is not submitted to the Commission; except that noth-
16 ing in this paragraph shall affect any liability or cause of
17 action which may have accrued prior to August 31, 1957.
18 Submittal of such quotations or tenders to the Commission
19 shall be made concurrently with submittal to the United
20 States Government, or any agency or department thereof,
21 for whose account the quotations or tenders are offered or
22 for whom the proposed services are to be rendered. Such
23 quotations or tenders shall be preserved by the Commission
24 for public inspection. The provisions of this paragraph re-
25 quiring submissions to the Commission shall not apply to

1 any quotation or tender which, as indicated by the United
2 States Government, or any agency or department thereof,
3 to any carrier or carriers, involves information the disclosure
4 of which would endanger the national security.”.

5 **TITLE VII—ESTABLISHMENT OF UNIFORM**
6 **COST ACCOUNTING**

Sec. 701. Establishment of uniform cost accounting system under the
Interstate Commerce Act.

7 **SEC. 701. ESTABLISHMENT OF UNIFORM COST ACCOUNT-**
8 **ING SYSTEM UNDER THE INTERSTATE COM-**
9 **MERCE ACT.**

10 Section 20 of the Interstate Commerce Act (49 U.S.C.
11 20) is amended by deleting subparagraph (3) and inserting
12 in lieu thereof the following new paragraph:

13 “(3) (a) The Commission may in its discretion, for
14 the purpose of enabling it the better to carry out the
15 purposes of all parts of this Interstate Commerce Act,
16 prescribe a uniform system of accounts applicable to any
17 class of carriers subject thereto, and a period of time within
18 which such class shall have uniform system of accounts, and
19 the manner in which such accounts shall be kept.

20 “(b) The Commission within one year following the
21 effective date of this Act shall establish and promulgate rules
22 and regulations prescribing uniform cost accounting and
23 uniform revenue accounting methods for the determination

1 of abandonment of nonproductive facilities under title III of
 2 the Surface Transportation Act of 1973, minimum compen-
 3 satory rates established under title IV of the Surface Trans-
 4 portation Act of 1973, and the repeal of discriminatory
 5 rates under title VI of the Surface Transportation Act of
 6 1973. Nothing in this paragraph is intended to prevent the
 7 Commission from establishing for any or all additional pur-
 8 poses a uniform system of accounts applicable to any class
 9 of carriers subject to this Act.

10 “(c) Pending the establishment of the revenue, cost,
 11 and accounting standards required by subparagraph (b)
 12 of this paragraph, the Commission shall use such information
 13 and techniques as it deems appropriate for determining
 14 costs and revenues required by this Act.

15 “(d) In formulating these rules and regulations, the
 16 Commission shall consult with and solicit the views of the
 17 Secretary of Transportation, other agencies and departments
 18 of the Federal Government, and representatives of the car-
 19 riers, their employees, shippers, and the public.”.

20 **TITLE VIII—INTERSTATE COMMERCE**

21 **COMMISSION BUDGET**

Sec. 801. Short title.

Sec. 802. Direct submission of Interstate Commerce Commission Budget.

22 **SEC. 801. SHORT TITLE.**

23 This title may be cited as the “Interstate Commerce
 24 Commission Budget Submission Act of 1973”.

1 **SEC. 802. DIRECT SUBMISSION OF INTERSTATE COM-**
2 **MERCE COMMISSION BUDGET.**

3 Section 201 (a) (5) of the Budget and Accounting Act,
4 1921 (31 U.S.C. 11 (a) (5)), is amended by inserting ", the
5 Interstate Commerce Commission," immediately before "and
6 the Supreme Court of the United States".

7 **TITLE IX—MISCELLANEOUS**

Sec. 901. Effective date.

Sec. 902. Separability.

8 **SEC. 901. EFFECTIVE DATE.**

9 Except as otherwise specifically provided in this Act,
10 the amendments and repeals by this Act shall become effec-
11 tive on the date of enactment of this Act.

12 **SEC. 902. SEPARABILITY.**

13 If any particular provision of this Act, or the application
14 thereof to any person or circumstance, is held invalid, the
15 remainder of the Act and the application of such provision
16 to other persons or circumstances shall not be affected thereby.

93^d CONGRESS
1ST SESSION

H. R. 7373

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1973

Mr. PODELL introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To preserve and insure the continued operation of transportation properties owned or operated by carriers by railroad in reorganization and confronted with liquidation; to protect the security interests of the United States in such properties; to provide for the payment of just and reasonable compensation for said properties; and, to provide for the national defense.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Federal Railroad
- 4 Transportation Authority Act of 1973".

1 **TITLE I—FINDINGS, PURPOSES, AND**2 **DEFINITIONS**3 **CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE**

4 **SEC. 101.** The Congress finds that modern, effective,
5 and efficient rail transportation is essential to interstate com-
6 merce and the national defense; that there exists in the
7 northeastern region of the United States a transportation
8 emergency which threatens the continuation of adequate
9 railroad service; that most of the rail service in said region
10 is performed by railroads now in reorganization; that certain
11 of the reorganization courts having jurisdiction over said
12 railroads are now considering the liquidation of the railroads
13 in order to preserve the debtors' estates for the creditors
14 thereof; that the preservation of adequate railroad trans-
15 portation for the immediate future can be met only by emer-
16 gency measures which will assure the continuation of the es-
17 sential service now provided the northeastern region and the
18 Nation by these railroads; and that a permanent solution to
19 the threat of liquidation can only be met by direct govern-
20 mental assumption of the duties, responsibilities, and prop-
21 erties of these railroads.

22 **DEFINITIONS**

23 **SEC. 102.** For the purposes of this Act—

24 (1) "Railroad" means the Federal Railroad Transpor-
25 tation Authority created under title II of this Act.

3

1 (2) "Board" means the Board of Directors of the Au-
2 thority as provided for in title II of this Act.

3 (3) "Secretary" means the Secretary of Transporta-
4 tion or his delegate unless the context indicates otherwise.

5 (4) "Commission" means the Interstate Commerce
6 Commission.

7 (5) "Railroad" means a common carrier by railroad,
8 as defined in section 1 (3) of part I of the Interstate Com-
9 merce Act (49 U.S.C. 1 (3)).

10 (6) "Eligible railroad" means a railroad in reorganiza-
11 tion for which there is no reasonable prospect of achieving
12 a traditional income-based reorganization or which is ordered
13 into liquidation by the reorganization court having jurisdic-
14 tion.

15 (7) "Subsidiary" means any corporation over which
16 an eligible railroad maintains effective control by ownership
17 of more than 50 per centum of its outstanding voting stock,
18 or otherwise; and which is engaged in the transportation of
19 persons or property by rail, highway, or water.

20 (8) "Facility" means all property of an eligible railroad
21 or subsidiary used or useful in the transportation of persons
22 or property by rail, highway, or water, including but not
23 limited to, lines of railroad, rail property, rolling stock,
24 yards, maintenance and repair shops, terminals, warehouses,

1 trucks, automobiles, garages, signal systems, offices, office
2 equipment, and other related facilities.

3 (9) "System" means the composite of all facilities
4 owned and operated by the Authority.

5 TITLE II—CREATION OF FEDERAL RAILROAD

6 TRANSPORTATION AUTHORITY

7 CREATION OF AUTHORITY

8 SEC. 201. There is authorized to be created a Federal
9 Railroad Transportation Authority. The purpose of the Au-
10 thority shall be to provide an effective, efficient, and modern
11 integrated transportation service utilizing existing railroad
12 facilities and subsidiary facilities and such future facilities
13 as the Authority may develop or acquire. The Authority
14 shall be an agency of the United States Government. It
15 shall be subject to the provisions of this Act. The right to
16 repeal, alter, or amend this Act at any time is expressly
17 reserved.

18 ORGANIZATION OF AUTHORITY

19 SEC. 202. (a) The Authority shall have as its governing
20 body a Board of Directors consisting of five members which
21 shall be appointed in the following manner:

22 (1) one member, with expertise in railroad opera-
23 tions, to be appointed by the President upon the recom-
24 mendation of the Secretary of Transportation, by and
25 with the advice of the Senate;

1 (2) one member with expertise in railroad labor
2 relations, to be appointed by the President upon the rec-
3 ommendation of the Secretary of Labor, by and with the
4 advice and consent of the Senate;

5 (3) one member, with expertise in matters relat-
6 ing to users of rail transportation, to be appointed by
7 the President on the recommendation of the Secretary
8 of Commerce, by and with the advice and consent of
9 the Senate;

10 (4) one member to be appointed by the Speaker
11 of the House upon the recommendation of the House
12 Committee on Interstate and Foreign Commerce;

13 (5) one member to be appointed by the President
14 pro tempore of the Senate upon the recommendation of
15 the Senate Committee on Commerce.

16 (b) The members of the Board shall elect a chairman
17 from among their number.

18 (c) The terms of the members of the Board shall be
19 for a period of three years and each shall be compensated
20 at the rate of \$50,000 per annum. The member selected as
21 chairman shall be compensated an additional \$1,000 per
22 annum.

23 (d) No Board member shall be allowed any wages,
24 perquisites or reward, or compensation for his services aside
25 from his salary or pension, but he shall be reimbursed for

1 actual expenses incurred by him in the performance of his
2 duties. Nor shall any Board member have any financial in-
3 terest in any railroad or subsidiary thereof at the time he
4 assumes his membership on the Board or during his term
5 thereon.

6 (e) A quorum of the Board shall consist of three
7 members.

8 GENERAL POWERS OF THE AUTHORITY

9 SEC. 203. (a) The Authority shall have the power to
10 sue and be sued and is authorized to own, manage, and oper-
11 ate the facilities of eligible railroads and subsidiaries for the
12 purpose of providing a modern, efficient, and effective trans-
13 portation service to those desiring to use said facilities; to
14 conduct research and development related to its mission; to
15 acquire by construction, purchase, or gift, all facilities, equip-
16 ment, and devices necessary to carry out the purposes of this
17 Act; and to engage in all business functions and activities
18 consistent with the purposes of this Act.

19 (b) The Board shall appoint such personnel as neces-
20 sary to maintain its offices and transact its business, and to
21 manage, supervise, and maintain the operations of its sys-
22 tem. It shall fix the compensation of such personnel and de-
23 fine their duties. Any appointee of the Board may be re-
24 moved at the discretion of the Board provided such removal

1 does not violate the provisions of a contract between said
2 appointee and the Board.

3 **APPLICABILITY OF THE INTERSTATE COMMERCE ACT AND**
4 **OTHER LAWS**

5 SEC. 204. Except as otherwise specifically provided in
6 this Act, the Authority shall be deemed a common carrier by
7 railroad within the meaning of section 1 (3) of the Inter-
8 state Commerce Act and shall be subject to all the provi-
9 sions of that Act, as well as other acts, both State and Fed-
10 eral, presently applicable to common carriers by railroad
11 within the United States.

12 **REPORTS TO THE CONGRESS**

13 SEC. 205. (a) The Authority shall transmit to the
14 President and the Congress, annually, commencing one year
15 from the date of enactment of this Act, and at such other
16 times as it deems desirable, a comprehensive and detailed
17 report of its operations, activities, and accomplishments under
18 this Act, including a statement of receipts and expenditures
19 for the previous year. At the time of its annual report, the
20 Authority shall submit legislative recommendations as it
21 deems desirable, including the amount of financial assistance
22 needed for maintenance, operations, and capital improve-
23 ments, the manner and form in which the amount of such

1 assistance should be computed, and the sources from which
2 such assistance should be derived.

3 (b) The Secretary shall transmit to the President and
4 the Congress, one year following enactment of this Act and
5 biennially thereafter, reports on the state of rail transporta-
6 tion and the effectiveness of this Act in preserving and pro-
7 moting such transportation, together with any legislative
8 recommendations.

9 SANCTIONS

10 SEC. 206. (a) If any person, corporation, association,
11 or group thereof engages in or adheres to any action, prac-
12 tice, or policy inconsistent with the policies and purposes
13 of this Act, obstructs or interferes with any activities au-
14 thorized by this Act, refuses, fails, or neglects to discharge
15 its duties and responsibilities under this Act, or threatens
16 any such violation, obstruction, interference, refusal, failure,
17 or neglect, the district court of the United States for any dis-
18 trict in which said person, corporation, or association resides
19 or may be found shall have jurisdiction, except as otherwise
20 prohibited by law, upon petition of the Attorney General of
21 the United States or the duly authorized representative of
22 the employees of the Authority, eligible railroad, or subsidi-
23 ary, to grant such equitable relief as may be necessary or
24 appropriate to prevent or terminate any violation, conduct,
25 or threat.

1 (b) Nothing contained in this section shall be con-
2 strued as relieving any person of any punishment, liability,
3 or sanction which may be imposed otherwise than under
4 this Act.

5 FINANCING OF THE AUTHORITY

6 SEC. 207. (a) There is authorized to be appropriated
7 to the Authority in the fiscal year of 1973, \$10,000,000, to
8 remain available until expended, for the purpose of assisting
9 in—

10 (1) the initial organization, staffing, and operation
11 of the Authority;

12 (2) the development and conduct of research, de-
13 velopment, and demonstration programs respecting new
14 equipment, facilities, and methods of transport; and

15 (3) the conduct of studies to determine the ultimate
16 form and extent of the Authority's system.

17 (b) There is authorized to be appropriated to the Au-
18 thority such sums as may be necessary to prevent net loss
19 in the operation and maintenance of the Authority's system.

20 (c) The Secretary is authorized, on such terms and con-
21 ditions as he may prescribe, to guarantee any lender against
22 loss of principal or interest on securities, obligations, or loans
23 issued to finance the purchase, maintenance, or rehabilitation
24 of facilities by the Authority and for other purposes con-

1 sisten with the objectives of this Act. The maturity date of
2 such securities, obligations, or loans, including all extensions
3 and renewals thereof, shall not be later than twenty years
4 from their date of issuance, and the amount of guaranteed
5 loans outstanding at any time may not exceed \$400,000,000.
6 The Secretary shall prescribe and collect from the lending
7 institution a reasonable annual guaranty fee. There are au-
8 thorized to be appropriated such amounts as necessary to
9 carry out this section not to exceed \$400,000,000.

10 TITLE III—PROVISION OF TRANSPORTATION
11 SERVICES

12 ASSUMPTION OF SERVICE BY THE AUTHORITY;

13 COMMENCEMENT OF OPERATIONS

14 SEC. 301. (a) (1) On and after October 1, 1973, the
15 Authority shall acquire the facilities of any eligible railroad
16 together with the facilities of said railroads' subsidiaries.

17 (2) The Authority shall pay to the trustee of the eligi-
18 ble railroad an amount equal to the liquidated value of its
19 facilities as determined by the Interstate Commerce Com-
20 mission. Said payment shall be in the form of money or
21 United States Government bonds maturing thirty years
22 from the date of issuance at an annual interest rate of 6½
23 per centum, or both.

24 (3) The Authority shall acquire the facilities of the
25 subsidiaries of eligible railroads by payment to the trustee

1 of the eligible railroad involved of an amount equal to the
2 value of said facilities as determined by the Interstate Com-
3 merce Commission. Said payment shall be in the form of
4 money or United States Government bonds maturing thirty
5 years from the date of issuance at an annual interest rate
6 of $6\frac{1}{4}$ per centum, or both.

7 (b) On the date of the acquisition of facilities the Au-
8 thority shall become responsible for their operation and
9 maintenance.

10 (c) Title to all assets of eligible railroads and their
11 subsidiaries not acquired by the Authority shall remain in
12 the trustees thereof for disposition as determined by the ap-
13 propriate reorganization court.

14 OPERATION AS DIVISIONS OF AUTHORITY

15 SEC. 302. (a) For a period of two years from the date
16 of acquisition of facilities the Authority operates in separate
17 divisions the facilities of each eligible railroad. Said divisions
18 shall continue to be considered separate and independent
19 carriers by railroad for purposes of the Interstate Commerce
20 Act and other acts applicable to carriers by railroad.

21 (b) During said two-year period the Authority shall
22 determine the most efficient and effective means of opera-
23 tion of its system, including the consolidation, modification,
24 or other alteration of its division, and shall thereafter place

1 its determinations into effect, subject to the provisions of
2 the Interstate Commerce Act and other applicable laws.

3 (c) The Authority shall confer with representatives of
4 users and the States and communities served by the Author-
5 ity's system for the purpose of determining their transporta-
6 tion needs and the efficiency of its operations.

7 (d) The Authority will assume and continue in effect
8 and unchanged for a two-year period from the date of
9 acquisition, all contracts maintained by eligible railroads with
10 local, State, and multi-State transportation authorities.

11 ABANDONMENT OF LINES

12 SEC. 303. (a) The Authority shall not seek authoriza-
13 tion to abandon any line of railroad for a period of one year
14 following acquisition and commencement of operations.

15 (b) During said one-year period the Authority shall
16 determine the present and possible future public need of such
17 lines. The Authority shall, upon completion of its study,
18 submit to the Congress a report on those lines which it
19 believes should be abandoned and the reasons therefor.

20 (c) Upon the completion of sixty days following the
21 submission of its report, it may proceed to seek authority for
22 abandonment pursuant to the provisions of the Interstate
23 Commerce Act.

1 PROTECTIVE ARRANGEMENTS FOR EMPLOYEES

2 SEC. 305. (a) The employees of eligible railroads and
3 their subsidiaries shall be provided fair and equitable ar-
4 rangements to protect their interests.

5 (b) Such protective arrangements shall include, with-
6 out being limited to, such provisions as may be necessary for
7 (1) the preservation of rights, privileges, and benefits (in-
8 cluding continuation of pension rights and benefits) to such
9 employees under existing collective-bargaining agreements
10 or otherwise; (2) the continuation of collective-bargaining
11 rights; (3) the protection of such individual employees
12 against a worsening of their positions with respect to their
13 employment; (4) assurances of priority of reemployment of
14 employees terminated or laid off; and (5) paid training or
15 retraining programs. Such arrangements shall include pro-
16 visions protecting individual employees against a worsening
17 of their positions with respect to their employment which
18 shall in no event provide benefits less than those established
19 pursuant to section 405 of the Rail Passenger Service Act
20 of 1970 and section 5 (2) (f) of the Interstate Commerce
21 Act.

22 (c) No employee of an eligible railroad, its subsidiaries,
23 or the Authority shall be affected by any change in compen-

1 sation or in condition, place, time, or type of employment
2 pending the execution of agreements between the Authority
3 and the representatives of the employees of eligible railroads
4 and their subsidiaries regarding the selection and assignment
5 of employees to perform work on the Authority's system;
6 the modification, if any, of seniority rights of employees in-
7 volved; and, the application to employees of the provisions
8 of protective arrangements provided for in this section.

9 (d) The protective arrangements shall be certified by
10 the Secretary of Labor. Representatives of the eligible rail-
11 roads, their subsidiaries, their employees, the Authority, and
12 the Secretary of Labor shall confer on the detailed provisions
13 to be included in the protective arrangements. Subsequent
14 to such conferences the Secretary of Labor shall determine
15 upon and certify a fair and equitable arrangement.

16 (e) Financial obligations arising under the protective
17 arrangement shall be borne equally by the Authority and the
18 estates of the eligible railroads.

19 (f) The Authority shall take such action as may be
20 necessary to insure that all laborers and mechanics employed
21 by contractors and subcontractors in the performance of
22 construction work financed with the assistance of funds re-
23 ceived under any contract or agreement entered into under
24 this title shall be paid wages at rates not less than those
25 prevailing on similar construction in the locality as deter-

1 mined by the Secretary of Labor in accordance with the
2 Davis-Bacon Act. The Authority shall not enter into any
3 such contract or agreement without first obtaining adequate
4 assurance that required labor standards will be maintained
5 on the construction work. Health and safety standards
6 promulgated by the Secretary of Labor pursuant to section
7 107 of the Contract Work Hours and Safety Standards
8 Act (40 U.S.C. 333) shall be applicable to all construction
9 work performed under such contracts or agreements except
10 any construction work performed by a railroad employee.
11 Wage rates provided for in collective bargaining agreements
12 negotiated under and pursuant to the Railway Labor Act
13 shall be considered as being in compliance with the Davis-
14 Bacon Act.

15 (g) The Authority shall not contract out any work
16 normally performed by employees in any bargaining unit
17 covered by a contract between the Authority or any railroad
18 providing interstate rail passenger service upon the date of
19 enactment of this Act and any labor organization, if such
20 contracting out shall result in the layoff of any employee or
21 employees in such bargaining unit.

22 TITLE IV—MISCELLANEOUS PROVISIONS

23 AUTHORIZATION FOR APPLICATION

24 SEC. 401. There are hereby authorized to be appropri-
25 ated amounts equal to 50 per centum of the liquidated value

16

1 of the facilities of eligible railroads and the values of facilities
2 of subsidiaries as determined by the Commission, acquired
3 by the Authority. Any sums appropriated shall be available
4 until expended.

5 **SEPARABILITY**

6 SEC. 402. If any provision of this Act or the application
7 thereof to any person or circumstance is held invalid, the
8 remainder of the Act and the application of such provision
9 to other persons or circumstances shall not be affected
10 thereby.

93^d CONGRESS
1st SESSION

H. J. RES. 50

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. ECKHARDT (for himself, Mr. DENT, Mr. HARRINGTON, Mr. EDWARDS of California, Mr. KASTENMEIER, Mr. HELSTOSKI, Mr. CARNEY, Mr. MITCHELL of Maryland, Mr. GONZALEZ, Mr. HOWARD, Mr. DINGELL, Mr. ROSENTHAL, Mr. TIERNAN, Mr. VAN DEERLIN, Mr. BINGHAM, Mr. FILBERG, Mr. CONYERS, Mr. MOSS, Mr. KYROS, Mr. PODELL, Mr. BROWN of California, Mr. CORMAN, Ms. ABZUG, Mrs. MINK, and Mr. HECILER of West Virginia) introduced the following joint resolution; which was referred to the Committee on Interstate and Foreign Commerce

JOINT RESOLUTION

To provide for the continued operation of the transportation properties owned or operated by Penn Central Transportation Company, to protect the security interest of the United States in such properties and to provide for the payment of just and reasonable compensation therefor.

Whereas the Penn Central Transportation Company has been in bankruptcy reorganization proceedings since 1970; and

Whereas the report of the trustees in bankruptcy, dated February 15, 1972, shows that any reasonable prospect of reorganizing the railroad as a private corporation is dependent on (1) the abandonment of or continued operation under some new form of subsidization of some nine thousand miles

of its twenty thousand miles of road, (2) the reduction of its work force by nearly ten thousand, to the point at which, in the judgment of Congress, the safety of operations would be gravely jeopardized, and (3) reimbursement for its performance of intercity passenger service on terms more favorable than those generally prevailing and outright subsidization of its commuter passenger service; and

Whereas the trustees for the bondholders under the several mortgages outstanding on the properties of Penn Central Transportation Company have urged the bankruptcy court to set an early deadline for a determination of whether a traditional income-based reorganization to continue the operation of the Penn Central properties under private corporate management is possible; and

Whereas the conditions on which a traditional income-based reorganization of Penn Central Transportation Company as a private corporation are reported by the bankruptcy trustees to be dependent are not consistent with the requirements of the United States, including the public, for transportation service or the requirements for having such service safely and economically conducted; and

Whereas the United States has a security interest in the Penn Central properties potentially exceeding \$100 million and the trustees of the Penn Central Railroad envision the need of further infusions of cash which would swell such figure to \$300 to \$600 million: Therefore be it

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*
- 3 That there is hereby established a Commission on Railroad
- 4 Transportation in the Northeast. The Secretary of Transpor-
- 5 tation shall serve *ex officio* as Chairman of the Commission.

1 There shall be six other members of the Commission consist-
2 ing of the chairman of the House Committee on Interstate
3 and Foreign Commerce and two members of that committee
4 designated by such chairman, and the chairman of the
5 Senate Committee on Commerce and two members of that
6 committee designated by such chairman. No member of the
7 Commission shall receive additional compensation for his
8 service as such member. Determinations of the Commission
9 shall be made by majority vote of the Commission members
10 other than the Chairman.

11 SEC. 2. It shall be the duty of the Commission on Rail-
12 road Transportation in the Northeast to keep itself closely
13 informed on all developments in In the Matter of Penn
14 Central Transportation Company, Debtor, numbered 70-347,
15 United States District Court for the Eastern District of
16 Pennsylvania. Whenever the Commission finds that there
17 is no reasonable prospect of achieving a traditional income-
18 based reorganization of Penn Central Transportation Com-
19 pany without the abandonment or subsidization of lines of
20 road reasonably needed for useful transportation, or the re-
21 duction of its work force to a degree not consistent with
22 efficient, nonburdensome, and safe operations, or the sub-
23 sidization of intercity or commuter passenger operations to a
24 degree more favorable than those generally prevailing, then
25 the Commission shall so determine and declare.

1 SEC. 3. There is hereby created a Federal corporation
2 which shall be known as the Northeast Transportation Au-
3 thority. The Secretary of Transportation shall serve ex of-
4 ficio as Chairman of the Board of Directors of the Northeast
5 Transportation Authority without additional compensation.
6 Four additional directors shall be appointed by the President
7 and shall be compensated in such manner and in such amount
8 as the President shall determine. The directors appointed by
9 the President shall each serve at the pleasure of the President.

10 SEC. 4. Promptly after all the members of the Board
11 of Directors of the Northeast Transportation Authority have
12 been named, they shall meet and determine what offices of
13 the Authority will be needed to conduct all transportation
14 operations now conducted under the direction of the trustees
15 of Penn Central Transportation Company, fix the duties of
16 such offices and, as needed, appoint persons to fill such offices
17 and fix their compensation and tenure. The Northeast Trans-
18 portation Authority shall have and may exercise all corporate
19 powers that Penn Central Transportation Company has and
20 which are not inconsistent with this Act.

21 SEC. 5. If and when the Commission on Railroad Trans-
22 portation in the Northeast, pursuant to section 2 of this Act,
23 makes a determination and declaration that there is no rea-
24 sonable prospect of achieving a traditional income-based reor-
25 ganization of Penn Central Transportation Company that

1 meets the requirements of section 2 hereof, then all property,
2 real or personal, owned or operated under the direction of
3 the trustees of Penn Central Transportation Company and
4 which is used or useful in the conduct of transportation shall
5 become the property of the United States of America. Title
6 thereto, with power to deal therewith pursuant to its corpo-
7 rate powers, shall be vested in the Northeast Transportation
8 Authority. As promptly as reasonably possible after the de-
9 termination and declaration of the Commission, the chief
10 executive officer of the Northeast Transportation Authority
11 shall certify to the trustees of Penn Central Transportation
12 Company which of its properties are not deemed used or use-
13 ful in the conduct of transportation. Any properties so certi-
14 fied shall not become the property of the United States of
15 America. Funds on hand at the time title passes to the United
16 States and funds thereafter collected as a result of prior opera-
17 tions, together with the proceeds of subsequent operations,
18 shall be available to the Northeast Transportation Authority
19 without appropriation to meet the expenses of conducting its
20 operations.

21 SEC. 6. Promptly after the Commission on Railroad
22 Transportation in the Northeast makes a determination and
23 declaration pursuant to section 2 of this Act, the Commis-
24 sion shall negotiate with the bankruptcy trustees in an effort

6

1 to agree upon a sum of money that will constitute just and
2 reasonable compensation for the property passing to the
3 United States under section 5 of this Act. In such negotia-
4 tions the Commission and the trustees shall be guided by the
5 standards of just and reasonable compensation that are set
6 forth for the guidance of the Court of Claims in section 7 of
7 this Act. Any agreement negotiated pursuant to this section
8 shall be subject to approval by the bankruptcy court before it
9 becomes binding on either party.

10 SEC. 7. The trustees of Penn Central Transportation
11 Company shall be entitled, at any time before an agreement
12 pursuant to section 6 of this Act becomes binding, to bring
13 suit in the United States Court of Claims and to recover
14 from the United States for the bankruptcy estate of the
15 debtor the just and reasonable compensation for the property
16 passing to the United States under section 5 of this Act. In
17 arriving at the just and reasonable compensation recoverable
18 by the debtor under this section, the Court of Claims shall
19 give due consideration to the security interest the United
20 States has in the property of the debtor pursuant to the
21 Emergency Rail Services Act of 1970 (Public Law 91-
22 663, Ninety-first Congress, 84 Stat. 1975), the ability or
23 inability of the debtor to pay taxes or other fixed charges or
24 to earn any return on the investment in its property or to

1 reorganize under conditions acceptable to the United States,
2 the marketability of its transportation properties under con-
3 ditions in which no railroad transportation may be available,
4 and such other factors as the court may find relevant to a
5 proper determination.

6 SEC. 8. The trustees shall distribute the proceeds of just
7 and reasonable compensation for the transportation proper-
8 ties of the debtor, as determined under section 6 or section
9 7 of this Act, together with proceeds of liquidation of
10 such other properties as the debtor may own, to the credi-
11 tors and holders of other interests in the debtor in accordance
12 with the laws applicable to bankruptcies and under the direc-
13 tion of the bankruptcy court. Such distribution shall consti-
14 tute full and final discharge of the United States of all liabil-
15 ities to any creditor or holder of any other interest in the
16 debtor and to Penn Central Transportation Company.

17 SEC. 9. The Northeast Transportation Authority shall
18 be deemed a common carrier by railroad within the meaning
19 of section 1 (3) of United States Code, title 49, and shall
20 be subject to all provisions of the Interstate Commerce Act.
21 Further, the Authority shall be subject to the same laws
22 and regulations with respect to safety and with respect to
23 the representation of its employees for purposes of collective
24 bargaining, the handling of disputes between carriers and

1 their employees, employee retirement, annuity and unem-
2 ployment systems, and other dealings with its employees as
3 any other common carrier subject to part I of the Interstate
4 Commerce Act. The Northeast Transportation Authority
5 shall not be subject to any Federal, State, or local taxes,
6 but the Authority may, after all tax liabilities of Penn
7 Central Transportation Company have been discharged, enter
8 into such arrangements as it deems equitable for the pay-
9 ment of moneys to States and localities in lieu of property
10 taxes. The Northeast Transportation Authority shall not be
11 subject to the restrictions of the civil service or other laws
12 generally applicable to Federal agencies, but its accounts
13 shall be audited by the General Accounting Office and the
14 General Accounting Office shall report the results of its
15 audits to Congress not less frequently than once each year.

16 SEC. 10. At the time title to the property described in
17 section 5 of this Act passes to the United States the North-
18 east Transportation Authority shall become the employer
19 of all employees and subordinate officials then employed by
20 the Penn Central Transportation Company (as those terms
21 are used in the Railway Labor Act) and shall assume all
22 obligations arising from prior employment as employees or
23 subordinate officials, other than those which will be satisfied
24 from the assets of Penn Central Transportation Company.

25 SEC. 11. The primary objective of the Northeast Trans-

1 portation Authority shall be to assure the public the most
2 economic, attractive, safe, and useful railroad transportation
3 service that can be furnished, while maintaining rates of pay,
4 rules, and working conditions for employees at a level not
5 less than that prevailing in the railroad industry in the United
6 States. In the event that such assurance requires the deter-
7 mination and declaration provided for in section 5 of this
8 Act and the property of Penn Central is passed to the United
9 States, as provided in sections 6, 7, and 8, and the Au-
10 thority operates the railroad as a common carrier as pro-
11 vided in sections 9 and 10, the Authority shall provide the
12 services in accordance with the standards set out above;
13 and in that event a principal objective of such operations
14 under such standards shall be to serve as a yardstick to afford
15 expertise for all agencies of government having to do with
16 railroad operations, shipping rates, rates of pay, and condi-
17 tions of employment, or having to do with other transporta-
18 tion matters concerning which such information would be
19 useful; and the Authority shall cooperate with such agencies
20 and with the committees of Congress by affording to them
21 all information deemed by such agencies or committees as
22 useful to them. The net proceeds of operations, if any, after
23 the liquidation of liabilities payable therefrom, shall be cov-
24 ered into the Treasury as miscellaneous receipts.

25 SEC. 12. There is hereby authorized to be appropriated

1 from any moneys in the Treasury not otherwise appropri-
2 ated such sums as the Board of Directors may show to be
3 necessary to meet the expenses of organizing and staffing
4 the Northeast Transportation Authority in preparation for
5 the takeover and such sums as may be shown from time to
6 time to be necessary, in addition to the proceeds of opera-
7 tion, to conduct the operations of the Northeast Transporta-
8 tion Authority in accordance with this Act.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 19, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN. We refer again to your letter of March 13, 1973, asking for a report on H.R. 4897. The bill would create a new not-for-profit Northeast Rail Line Corporation empowered to acquire, maintain, improve, and prescribe rules for the operation of rail lines and necessary appurtenances for the purpose of fully developing the potential of modern rail service in the Northeast region of the Nation.

The Northeast Rail Line Corporation would be authorized to issue debentures guaranteed by the United States in order to finance the acquisition of rail lines in the Northeast region of the United States. The costs to the Corporation of rehabilitating, operating and maintaining these rail lines would be financed from charges for use of its acquired rail lines and appurtenances or from appropriations to the Secretary of Transportation for disbursement to the Corporation. We believe that this arrangement may be considered a federal program.

Our Office has consistently taken the position that the public interest is best served when congressional control over activities is exercised through annual reviews and affirmative action on planned programs and financing requirements which attend the appropriation processes, and through the application of statutes and regulations which usually govern the operations of Government agencies. We believe that departures from the standard should be permitted only on a clear showing that an activity cannot be successfully operated in the public interest through the framework of a new regular Government agency or through an expansion of similar programs in existing Government agencies. And if your committee should decide that the functions to be performed by the Northeast Rail Line Corporation could be performed as well by a Government agency, and amend H.R. 4897 accordingly, section 208(b)(1), (2), and (3) of the bill should be deleted because the Comptroller General would have adequate audit authority under other provisions of law.

However, if a corporation is considered best suited as the organization for achieving the purposes of the bill, we suggest that the Corporation (1) be made subject to the provisions of the Government Corporation Control Act, and (2) be given borrowing authority from the Treasury as the source of funds for acquiring rail lines. The Northeast Rail Line Corporation would then be subject to the budgetary review process contemplated by sections 102, 103, and 104 of the Government Corporation Control Act, and since the Treasury generally can borrow funds at a lower cost than Federal or private corporations, the financing cost of rail line acquisition would be less than that now provided by the sales of Government-guaranteed debentures authorized in sections 206 and 504 of H.R. 4897.

If, as suggested, the Northeast Rail Line Corporation were made subject to the provisions of the Government Corporation Control Act, section 208(b)(1), (2), and (3) of H.R. 4897 should be deleted, because the Comptroller General would have adequate audit authority under the Control Act. However, in order to provide the General Accounting Office with needed flexibility as explained in our comments on other bills, we suggest that the following language be added to the amended bill:

Notwithstanding the provisions of section 105 and 106 for wholly owned corporations of the Government Corporation Control Act, the financial transactions of the Northeast Rail Line Corporation shall be audited by the Comptroller General not less than once during each three year period and reports of the results of each such audit made to the Congress within six and one-half months following the end of the fiscal year covered by the audit.

However, if the Northeast Rail Line Corporation is not made subject to the Government Corporation Control Act, we suggest that (1) the words "accounts and operations" be substituted for the words "financial transactions" in lines 3 and 15, page 11, of subsection 208(b)(1), of H.R. 4897, and (2) the words "accounts and operations" be substituted for the words "financial transactions" in line 24, page 11, and line 7, page 12 of subsection 208(b)(2), of H.R. 4897. These changes are needed because, in some cases, non-Government agencies have been reluctant to allow our Office to review records not specifically related to financial matters when our audit authority contained only the term "financial transactions."

Regardless of the eventual form that an organization takes to perform the functions now given to the Northeast Rail Line Corporation in H.R. 4897, we have these additional suggestions and observations on the bill.

Subsection 208(a)(1) of H.R. 4897 provides for annual audits of the Northeast Rail Line Corporation by independent certified public accountants or independent licensed public accountants. Our Office has adopted language regarding the qualifications of public accountants conducting audits. We recommend that the following language changes be made: (1) on line 4, page 10 of subsection 208(a)(1) of H.R. 4897 insert a period after the word "annually"; and (2) substitute the following language for the part of the subsection immediately following the word "annually" and concluding the sentence on line 8, page 10:

Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States; except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who, although not so certified or licensed, meet, in the opinion of the corporation, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975: Provided, that if the corporation deems it necessary in the public interest, he may prescribe by regulation higher standards than those required for the practice of public accountancy by the regulatory authorities of the States.

Sections 402 and 403 of H.R. 4897 provide that rail carriers shall have the right to continue using, or to begin using, freight and passenger service over lines conveyed to the Northeast Rail Line Corporation in return for payment to the Corporation of \$0.60 per thousand gross-ton-miles of locomotive and train operations. Preexisting agreements and contracts for the use of track and other facilities conveyed to the Corporation would not remain in effect. Neither the basis for the \$0.60 per thousand gross-ton payment rates nor the costs intended to be recovered by the Corporation from such rates are specified in the bill. Possibly the Corporation should be allowed some administrative discretion in establishing track and facilities usage rates consistent with economic and operating conditions and costs. Consequently your Committee may wish to consider substituting for the fixed rates specified in the bill descriptions of the purposes of the freight and passenger charges and authorizing the Corporation to establish and revise rates as warranted by economic and operating conditions and costs, subject to such controls as the Committee may consider appropriate.

The first sentence of subsection 203(f) of H.R. 4897 provides that "Each director shall receive compensation at a rate of \$300 for each meeting of the board that he or she attends." We suggest that the words "who is not a fulltime employee of the Federal Government" be inserted after the word "director", because the bill contains no restriction against appointing Federal employees as directors of the board, and there would be no need to pay compensation to such appointees for attending board meetings.

The first four words of section 501 of H.R. 4897 are "There is hereby appropriated * * *" While we believe that this language is intended to merely authorize an appropriation to be made by the Congress at a later date, it might be contended that this language would constitute an appropriation so that no further action by the Congress would be required. To remove any doubt in the matter, we suggest that the words "There is hereby authorized to be appropriated * * *" be substituted for that language.

Subsection 302(a) of H.R. 4897 states that compensation for rail lines acquired by the Northeast Rail Line Corporation shall be the net liquidation value of the property conveyed. Net liquidation value is not defined in the bill, and we are unaware of a more than general meaning associated with the term. Because of the practical importance that this term would assume in the operation of some of the provisions of H.R. 4897, your Committee may wish to consider including a definition of the term in section 101, in the manner that a definition of avoidable loss was included in section 102 of the Rail Passenger Service Act of 1970, approved October 30, 1970, Public Law 91-518, 84 Stat. 1328.

Attached for your consideration are references to some technical changes in the bill.

Sincerely yours,

PAUL G. DEMBLING,
(For the Comptroller General of the United States).

Enclosure.

ATTACHMENT

In line 6, page 3, the word "terminal" should be substituted for the word "technical."

In line 23, page 3, the word "Nonprofit" should be substituted for the words "Not-For-Profit."

In line 15, page 7, and line 12, page 8, the word "Non" should be substituted for the words "Not-For," and the first word in line 16, page 7, and line 13, page 8, should not be capitalized, since it is part of the word "Nonprofit."

In line 7, page 17, the "(a)" should be a "(b)."

In line 13, page 22, the word "after" is misspelled.

In line 9, page 31, the figure \$50,000,000 should be substituted for the figure \$5,000,000, if it is intended H.R. 4897 should agree with a similar provision in the companion bill, S. 1031.

In line 17, page 31, the words "Federal Railroad" should be substituted for the word "Rail."

In line 4, page 32, the words "sections 402 and 403" should be substituted for the words "section 502."

In line 11, page 34, the "(a)" should be a "(b)."

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 29, 1973.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN. This is in reply to your letter of February 5, 1973, asking for our comments on H. J. Res. 50, which would insure the continuation of transportation services through a federally owned corporation that are now performed by the Penn Central Transportation Company, regardless of the outcome of the reorganization proceedings in which Penn Central is currently involved.

The factors involved in the drafting of H. J. Res. 50, which was introduced January 3, 1973, have been highlighted in the act of February 9, 1973, Pub. L. 93-5 (S. J. Res. 59), 87 Stat. 5, dealing with Penn Central's labor dispute, and in the reports of the Interstate Commerce Commission and Department of Transportation, entitled "Northeastern Railroad Investigation" and "North-eastern Railroad Problem," respectively.

Under section 2 of Pub. L. 93-5, the Secretary of Transportation was directed to submit a report to the Congress which "provides a full and comprehensive plan for the preservation of essential rail transportation services in the Northeast section of the Nation;" the Interstate Commerce Commission also decided to submit a report on the subject at the same time.

These both indicate that essential Northeast rail services can only be successfully and economically maintained if the Northeast rail system is considered as a whole rather than on a carrier-by-carrier basis. H. J. Res. 50 is only concerned with maintaining the property and services of Penn Central that are useful in railroad transportation.

The corporation created in section 3 of the resolution, designated the Northeast Transportation Authority, is not made subject to the Government Corporation Control Act, as amended, 31 U.S.C. 841 *et seq.*, which provides for financial control of Government corporations through the preparation of annual business-type budgets, the consideration of budget programs by the Congress, and the audit of the operations of the corporations by the General Accounting Office. We think that the public interest is best served when Congressional control over Federal activities is exercised through annual reviews of planned programs. We therefore recommend that H.J. Res. 50 be amended to subject the Northeast Transportation Authority to the Government Corporation Control Act.

The Government Corporation Control Act requires an annual audit by our Office. Section 9 of H.J. Res. 50 also provides for audit by our Office and an annual report thereon to the Congress. Requirements for annual audits are not entirely compatible with the flexibility we need in order to meet the heavy demand made on our professional resources by the increasing number and complexity of Congressional requests and the audit functions vested in the Comptroller General by recent legislation. If the joint resolution is to make the Northeast Transportation Authority subject to the Government Corporation Control Act, we suggest this additional provision:

"Notwithstanding the requirements for annual audits and annual reports to the Congress there on in sections 105 and 106 of the Government Corporation Control Act (31 U.S.C. 850, 851) the financial transactions of the Northeast Transportation Authority shall be audited by the General Accounting Office at least once in every three years, and reports of the results of each such audit made to the Congress within six and one-half months following the end of the fiscal year covered by the audit."

If the Northeast Transportation Authority is not to be made subject to the Government Corporation Control Act, we recommend deletion of the clause beginning with the word "but" on line 12 and ending with the word "year" on line 15, page 8, H.J. Res. 50, and substitution of the following:

"* * * but the accounts and operations of the Northeast Transportation Authority for any period during which Government capital has been invested therein, or Federal funds are available to finance any portion of its operations, shall be subject to audit by the Comptroller General at such time and to such extent as he shall determine. The representatives of the General Accounting Office, shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for auditing the accounts and operations, and in verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. A report of any such audit may be made by the Comptroller General to the Congress when he deems it necessary to keep Congress informed of the operations and financial condition of the corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable."

You may wish to consider inserting the above language as a separate sentence to begin with the word "But," or to divide the section into subsection (a) and subsection (b), the latter subsection to embody the audit and access to records requirements.

Section 3 of H.J. Res. 50 provides that the four of the Board of Directors of the Northeast Transportation Authority appointed by the President "shall be compensated in such manner and in such amount as the President shall determine." Your committee may wish to specify at least the maximum level or amount of compensation to be paid to the four appointed members of the Board.

We have no recommendations to make concerning the objectives of H.J. Res. 50.

Sincerely yours,

PAUL G. DEMBLING
(For the Comptroller General of the United States).

CHAIRMAN OF THE BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C., June 21, 1973.

Hon. HARLEY O. STAGGERS,
Chairman,
Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in response to your request for the Board's views on H.R. 5385, a bill entitled "The Surface Transportation Act of 1973."

In commenting on similar legislation last year (H.R. 12209), the Board made two comments which we want to reiterate.

First, the Board lacks the expert knowledge necessary to evaluate the merits of specific provisions in the bill, since the subject of regulating and assisting surface transportation companies is outside the Board's province.

Second, the Board continues to oppose the provision in Title I naming the Chairman of the Board of Governors as a member of the Loan Policy Board which would be established as part of the new Revenue Financing Division within the Department of Transportation. The Loan Policy Board would be a continuing body responsible for policies involved in the granting or denial of applications for financial assistance from surface transportation companies, a function not directly related to the conduct of monetary policy or the regulation and supervision of banking.

With regard to the program of loan guarantees set up in Title I, the Board is aware of reservations concerning these provisions held by the Secretary of Transportation. Since these provisions could have a substantial budgetary impact if borrowers were to encounter adverse circumstances, we believe the views of the Secretary, and of the Office of Management and Budget, should be carefully considered by our Committee.

I appreciate the opportunity you have extended the Board to comment on this legislation, and I hope these comments will prove helpful to you and the other members of your Committee in considering this complex matter.

Sincerely yours,

ARTHUR F. BURNS,
Chairman.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF EMERGENCY PREPAREDNESS,
Washington, D.C., May 5, 1973.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for comments of this Agency concerning two bills, H.R. 4897, 93d Congress, cited as the "Essential Rail Services Act of 1973," and H.R. 5385, 93d Congress, cited as the "Surface Transportation Act of 1973."

The Office of Emergency Preparedness recognizes the importance of appropriate measures to insure the maintenance and improvement of the Nation's rail transportation system. As to the merits of the subject legislation, however, we defer to the Department of Transportation in light of its developed expertise concerning this complex problem.

The Office of Management and Budget advises that it has no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

DARRELL M. TRENT,
Acting Director.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., Apr. 27, 1973.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN. This is in reply to your letter of April 9, 1973, requesting the views of the Office of Management and Budget on H.R. 6591, a bill cited as the "Federal-Aid Railroad Act of 1973."

On April 17, 1973, the Secretary of Transportation, Claude S. Brinegar, testified before the Subcommittee on Transportation and Aeronautics of your Committee and discussed several serious problems with H.R. 6591. For the reasons given by the Secretary in his statement, the Office of Management and Budget recommends against the enactment of H.R. 6591.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

Mr. JARMAN. This morning we are pleased to have the Honorable George Stafford, Chairman of the Interstate Commerce Commission. We are honored to have our friend before us today, and as always, we are sure that his testimony will be most helpful in our considerations.

Because of the time element involved, it has been a practice of the committee to allow witnesses to submit a formal written text for the record, and to summarize briefly those remarks for the members, in order to allow sufficient time for questions and answers.

Mr. Stafford, would you identify the associates at the table with you, for the record, and then proceed with your testimony.

STATEMENT OF HON. GEORGE M. STAFFORD, CHAIRMAN, INTER-STATE COMMERCE COMMISSION; ACCOMPANIED BY ROBERT J. BROOKS, ASSOCIATE DIRECTOR, OFFICE OF PROCEEDINGS; GEORGE M. CHANDLER, STAFF DIRECTOR, NORTHEASTERN RAILROAD PROJECT; AND JOHN A. GRADY, DIRECTOR, BUREAU OF ACCOUNTS

Mr. STAFFORD. Thank you, Mr. Chairman.

I have with me here at the head table George M. Chandler, formerly of my staff, but now at my request heading up the investigation of the Northeast railroad situation, and to my left, Bob Brooks, Associate Director of the Office of Proceedings. I had asked Bob here about a year and a half, 2 years ago to start our early work on the Northeast railroad problem, and so they are both here with me. Then I have other staff with us who will fill in as need be.

Commissioner Chester M. Wiggin, of New Hampshire, whom I had asked to serve as the administrative head of this investigation is unable to be with us today because of illness in the family. I am sure that Mr. Chandler and Mr. Brooks and the rest of them will be able to answer any of the technical questions which you may have concerning the Commission's recommendations.

We are here today to discuss several bills which are before the Congress, each dealing with the railroad problem in one way or another. Among the proposals before the subcommittee is one submitted by the Interstate Commerce Commission, H.R. 6591. I shall devote most of my formal testimony today to an explanation of that proposal.

If I can convey just one thought to you today, it is that we must recognize clearly the dismal financial state of rail transportation in the Northeast quadrant of the United States. Without exaggeration, the situation has reached crisis proportions, and in my view, and that of the Commission, only significant, perhaps even drastic, Federal Government action will solve this problem.

In the 2½ years since the Penn Central bankruptcy, the Commission and members of its staff have discussed the eastern railroad situation with many interested individuals. Those include persons involved in the management of the railroads all over the country; users of transportation services; and State and local government officials who are directly concerned with maintenance of needed rail service to the points and communities which they represent.

Almost everyone concerned with the problem agrees that only a major Government involvement can produce an acceptable solution and preserve and restore the kind of rail transportation service which the country needs.

I would like to stress also that this is not just a northeastern problem. The railroads of necessity work together as a single system, therefore, the problem is not confined to the Northeast. Most rail traffic moves over more than one line. Consequently, if even a single railroad is unable to carry its share—that is, is not operated well enough to form an effective link in that system—the whole system suffers. As a result, all users of transportation service throughout the United States bear the consequences.

As a result of the prompt action taken by the Congress in dealing with the work stoppage of the Penn Central Railroad in February, Senate Joint Resolution 59 was passed. That resolution directed the Secretary of Transportation to issue within 45 days a plan for preserving and maintaining essential rail services in the Northeast.

Although not directed by the joint resolution, we decided that we, too, should submit a recommendation. We did this not in any competitive spirit, but rather because we felt that the Congress should have before it alternative proposals, and because we thought that we could make a positive contribution. It was, in fact, something that we had been working on for some time. The plans submitted by us, the Secretary of Transportation, and a number of other individuals and groups have received widespread publicity in the press, and I assume you are generally familiar with them.

H.R. 4897, H.R. 5822, AND HOUSE JOINT RESOLUTION 50

In our March 26 report to the Congress on the Northeast rail situation, we adopted a position that rail nationalization is not the solution. I wish to reassert that position before this subcommittee today.

Many of the proposals contained in House Joint Resolution 50 would tend to nationalize the Penn Central and for that reason we cannot support that approach. Furthermore, by limiting its application to Penn Central, the resolution ignores the fact that a substantial amount of service in the Northeast is performed by other bankrupt railroads. We believe that failure to consider those carriers must of necessity prove counterproductive to long-term goals.¹

Evidence indicates that government operation of railroads in other countries has failed to produce better service at lower rates, to provide efficient use of facilities, or to increase productivity of employees. The data shown in attachment A [see p. 175] buttresses these conclusions.

Finally, in regard to House Joint Resolution 50, purchase of the entire Penn Central properties, at market value, could run as high as \$14 billion.² Although some of the assets are not transportation related, such a figure does not even begin to take into consideration that additional funds would be required to rehabilitate the system. Moreover, the Penn Central's operating loss, which totaled almost \$200 million in 1972, will probably not be reduced under the direction of a government corporation. To the contrary, experience would seem to indicate that, with the elimination of private initiative, losses would increase. An example in point is the Long Island Railroad which lost \$2 million in 1965, its last full year of operation by the Penn Central, and in 1971 under State operation, lost \$50 million.

¹ See table below:

	Miles of railroad	Total revenues (millions)	Employees	Ton-miles (millions)
Penn Central.....	19,864	1,825	82,400	83,200
Other roads.....	7,165	544	26,200	23,000

² This figure has been quoted in the past by Penn Central officials as being the value of their assets.

The Commission feels that even temporary government ownership will in the long run prove too costly. Some of the statements made above dealing with House Joint Resolution 50 apply to H.R. 4897 and H.R. 5822. The Commission is of the view that no new corporation should be created and that the railroads should remain under private ownership. For these reasons, we do not favor enactment of these two bills. Additionally, we seriously doubt that \$1 billion is an adequate amount to finance the purchase of all the rail lines subject to acquisition under such legislation.

H.R. 6591

It is the Commission's conviction that nothing short of a substantial restructuring and reconstruction of the basic railroad system in the Northeast will be adequate to restore that system to its rightful competitive position so that it will once again be able to attract traffic and provide efficient and satisfactory service. To carry out that restructuring we see no alternative to a substantial level of Federal Government involvement to provide the necessary guidance to bring an overbuilt and antiquated system into a national posture. In order to provide the necessary reconstruction, we see no alternative to the infusion of substantial new capital. To the best of our knowledge, this capital will not be available from private sources. The Commission's plan, therefore, proposes a government program of significant dimensions to provide the funding to rebuild the railroad system in the Northeast.

The draft bill which we have presented to the Congress for its consideration and introduced as H.R. 6591 is divided into four separate titles. For the convenience of the subcommittee, I hand you a section-by-section analysis of the draft bill which accompanied our March 26 report. Title I contains a statement of congressional purpose and a series of definitions of terms used in other portions of the bill. The other three titles lay out the three-part plan which the Commission has advanced to deal with various aspects of the railroad problem.

We have proposed a long-term capital grant program under which Federal funds would be used to rebuild, modernize, and reconstruct the most important main lines and the yards and terminals which are an integral part of long-haul rail transportation.

Another program deals with unproductive low-density railroad lines. These lines are not of sufficient significance to be included in the main-line system and thus are ineligible for upgrading through Federal funding. They are nevertheless essential to the communities which they serve and to the individual businesses which rely upon them for railroad transportation. That part of our program, found in title IV of our bill, includes a temporary matching grant operating subsidy program to be jointly funded by State and Federal agencies and a significant change in the Commission's procedures for dealing with railroad abandonment applications.

Finally, the Commission has proposed an interim program to deal with the emergency situation with which we are faced today in the Northeast. With many railroads in bankruptcy and in danger of being shut down, provision must be made for the continuation of essential service. The other programs, the long-line capital grant program and the branch-line operating subsidy program, cannot be put into action soon enough for their results to be of any material

assistance to a carrier in bankruptcy and running short of the cash needed to continue operations. As an interim solution, a temporary operating subsidy program is proposed to keep needed services operating long enough to get the railroads involved out of reorganization and to give the longer range programs time to demonstrate their effect.

Another feature of the Commission's plan which has received widespread comment—and I must say most of it quite favorable—is the suggested 1-percent tax on all for-hire domestic surface freight transportation. This excise tax, modeled on the World War II transportation tax and also similar to the current 8-percent tax on air passenger fares and freight charges, is designed to recover for the treasury approximately the same amount of money as would be expended for the long-range capital grant program proposed by the Commission. We estimate that such a tax would recover about \$500 million annually.

In the Commission's view, improved rail service will benefit all users of transportation, regardless of the mode of original shipment and regardless of their location. We think it reasonable, then, to impose a modest tax on the transportation charges which users pay in order to fund the long-range facilities improvement program for the railroads. We anticipate criticisms of this approach, particularly from users of other modes of transportation and from carriers other than railroads. However, we believe it would have been irresponsible to propose a program involving major Federal expenditures without suggesting some way in which those funds could be recouped.

Now, I will discuss some of the principal features of the Commission's proposal. I will start with title II which sets forth the interim and emergency program.

A railroad in bankruptcy, under this proposal, would be permitted to tender to the Federal Government its transportation properties for lease. At the same time, the Government would execute an operating agreement with the railroad and agree to pay it a sum equal, in very rough terms, to the losses which it would suffer through the course of operation. This procedure insures that the railroad will continue operating, while, at the same time, it guards against a continuing draining of its assets which would impair the constitutional rights of its creditors. We have termed this arrangement a lease and operating agreement. It really is very similar to the operating differential subsidy program now available to the U.S. merchant marine industry, with which I am sure you are all generally familiar.

In return for the subsidy payment from the Federal Government, the railroad would have to agree to accept a substantial degree of Federal control. The Commission would be empowered to place agents on the premises of the railroad and to monitor its expenditures, its accounting practices, and even its operating practices.

During the period when the lease and operating agreement are in effect, the Commission would have rather sweeping powers to direct the restructuring of rail service in the entire area served by the bankrupt railroad taking advantage of the program. The Commission could direct that unnecessary operations be abandoned by use of expedited procedures; it could require one railroad to operate in emergency situations over the lines of another; it could require the lease of properties on fair and reasonable terms between and among

railroads; and after hearings and opportunity for parties to make their positions known, it could require the sale of rail properties and allow their acquisition by others. It is assumed that through these actions the operations of the bankrupt carrier would be streamlined and the operating losses significantly reduced if not eliminated in a relatively short time. The ultimate aim is for the railroad to emerge from reorganization. What the Commission has proposed is a program by which it would move in and attempt to develop with the railroads and the bankruptcy courts a series of reorganization plans for the several railroads now subject to the Bankruptcy Act which would permit all of them to emerge from the reorganization in a relatively short time.

Title III provides a long-range capital improvement program. It establishes a selection procedure under which the principal lines and facilities to be upgraded would be identified. The bill does not attempt to list specific standards for selection, but instead sets forth a procedure to be followed in making that selection.

The first step would be the filing of an application by the railroads asking that particular facilities be included in the new Federal-aid railroad system. The value of this approach is that the railroads have intimate knowledge of the quality of their facilities, their traffic patterns, and the potential need for their own facilities. Using that information, as well as any other data which the Commission had developed itself, obtained from other sources, or obtained from actual examination of the tracks and yards themselves, the Commission would publish a tentative diagram of the basic system.

Next, all interested persons would have an opportunity to comment on these recommendations. The Secretary of Transportation would be required to comment, and as part of his recommendations he would be specifically charged with identifying any high-density corridors in which it would appear that high-speed passenger transportation would be in the public interest.

Upon consideration of the comments of all persons, and following public hearings, if considered necessary by the Commission, the Commission would publish its final determination of the basic system. This final designation would become effective upon its submission to the Congress and would not be reviewable in any court.

Title III establishes a federally funded capital grant program for the rehabilitation of those facilities selected for inclusion on the Federal-aid railroad system. The railroad owning the facility would submit to the Commission its plans for needed construction work. Upon their approval, the railroad would follow up by submitting detailed project designs, specifications, and cost estimates. Finally, these would be approved by the Commission, and a construction contract executed under which the railroad would perform the work, using rail labor. Upon completion, and acceptance of the work as satisfactory by the Commission, the railroad would be reimbursed from Federal funds as provided for in the contract. This three-step project planning and contracting procedure is similar to that provided under the Federal-Aid Highway Act.

The final section of title III establishes the 1-percent transportation tax which I have already mentioned.

The Commission's proposal for dealing with low-density rail lines and providing expedited abandonment procedures is contained in

title IV of our bill. The approach which we recommend combines three principal features: First, railroads would be required to give ample notice—18 months—that they may be proposing a line abandonment. Second, expedited procedures are provided under which the Commission would have to act on an abandonment application within 8 months and would have to allow abandonment of a line not meeting the costs of its operation. Third, we propose a matching fund grant program under which the Federal Government would reimburse the States for a period not to exceed 3 years, for 70 percent of the amount of any operating subsidy paid by the States to maintain needed rail services the operation of which does not cover costs.

That concludes the presentation of our statement and we are ready to answer any questions that you may have at this time.

Thank you.

[Attachment A, referred to, follows:]

ATTACHMENT A

CLASS I RAILROADS IN THE UNITED STATES OUTPERFORM ALL MAJOR GOVERNMENT CONTROLLED ROADS

	Profit or (loss) ¹ (millions)	Shipper freight cost per ton-mile (cents)	Employees per mile	Labor cost as a percent of operating revenue
U.S. class I railroads.....	\$569	1.31	2.8	53.7
Canadian Pacific.....	21	1.28	3.6	58.1
Canadian National.....	(116)	1.32	3.5	65.1
British Railways.....	(354)	3.34	25.5	79.6
French National Railways.....	(901)	2.83	13.5	86.4
German Federal Railways.....	(704)	2.88	21.6	85.9
Italian State Railways.....	(578)	2.40	18.7	111.0
Netherland Railways.....	(41)	2.07	13.3	62.8
Japanese National Railways.....	(376)	1.66	36.0	47.2

¹ All figures are based on 1968 operations.

Source: "The Free World Railroads," H. G. Becker, Handling & Shipper, August 1971.

Mr. JARMAN. Thank you very much, Mr. Chairman.

I have one or two questions to ask at this time with reference to the interim program which deals with the immediate emergency situation in the Northeast.

What would be the procedure for a railroad in bankruptcy under this proposal as to participating in this transaction with the Federal Government? Would this be on a voluntary basis, or what would be the motivating features of it?

Mr. CHANDLER. Mr. Chairman, the participation by the railroad in reorganization under the Commission's proposal would be voluntary. It would make application to the Commission for participation in this program. The assumption is that the benefits would be sufficient to lure the carrier into making this arrangement, but in view of the fact that one or two of the railroads in reorganization are certainly not in desperate financial condition, and are able to meet their costs of operation, it was thought that it should not be a compulsory program.

Mr. JARMAN. When the railroads emerged from the reorganization would there be any provision for the Government recovering any of its payments for losses that had been suffered during the course of the operation?

Mr. CHANDLER. Yes. The plan that, at the time the lease and operating agreement comes to an end, either because the railroad can be reorganized or because the 3-year statutory limit for that plan has expired, the railroad would then issue to the United States a security, which we have termed a subordinated debenture. The amount of that security would be the sum actually paid by the Government to the carrier. The security would run for a period of 20 years and be subordinated to other outstanding debt. It would be in effect a soft loan, the kind of thing you find under the World Bank program. For the first 5 years interest would be paid only at 3 percent, and after that it would increase to 6 percent. This would be a security, I think I have said, for a 20-year period, and we would hope that out of the reorganization procedure would come a healthy railroad which would ultimately be able to repay that money to the Federal Government.

Incidentally, while the lease and operating agreement were in effect no interest would be paid whatever. Interest would not start until that lease was terminated.

Mr. JARMAN. Have you made any rough estimate as to what you can foresee to be the cost to the Government on this interim plan? I know that is a difficult answer to pinpoint, but have you any rough ideas that you can give to the committee?

Mr. CHANDLER. Well, we think that if the decision were that all of the service now being provided by the bankrupt railroads in the Northeast were to be continued at the same level as it is now, and no economies instituted, the costs could run as high as \$175 million a year.

Mr. JARMAN. \$175 million?

Mr. CHANDLER. Yes. Now our assumption is that as soon as this program began the Commission would have the authority to move in and direct that changes be made in the operation. We think there are many areas in which reorganization of the railroads has been held up because there are several railroads in bankruptcy. They are not working together. There are duplicate lines which can be eliminated without impairing service to individuals or cities and counties and States.

We think that we could begin quite promptly to reduce the losses. If we cannot do that, why the program has failed, but hopefully that sum would begin to decrease quite rapidly.

Mr. JARMAN. I can understand that you have to give a general response to my question.

Let's assume the legislation is passed on that recommendation. How soon would the Government be able to move, and to what degree could losses be cut, or at least what do you think would be a reasonable objective for the Government?

Mr. CHANDLER. I don't know if I can answer that, Mr. Chairman. I think that it is always a good idea to have an objective and—

Mr. JARMAN. And get as much out of it as you can.

Mr. CHANDLER. And perhaps say that within 60 days the Commission should begin to come forward with some interim restructuring plans which should begin right then to reduce costs. I think that it would be pretty difficult to say that within 1 year, for instance, we should be able to cut the loss in half or something like that. I think we might strive for that, and hope to accomplish it, but I think there

are other ways in which you might cut this loss. We have estimated that \$175 million figure, which is pretty high. We have estimated that on the basis of the minimum amount that appears necessary to stop the drain on the assets which would impair the rights of the creditors. It does not include the taking of full depreciation, for example, but it does include the taking of some depreciation. After all, there is actual physical deterioration of the property which does have an effect on the creditors' rights. It would include all actual cash loss. It would include the payment of equipment trust obligations. The railroad cannot operate without equipment and those items of the fixed charges have to be met.

As the railroad became healthier, hopefully, the overall operating experience of the carrier would be such that the drain could be reduced simply because service could be improved and traffic increased. To put a figure on it would be pretty difficult.

Mr. Brooks might be able to add to that.

Mr. Brooks. Mr. Chairman, we are speaking in terms of a 3-year ease period in which we would expect the major portion of the program to be well underway.

Mr. JARMAN. Let me ask, how many railroads are we talking about?

Mr. Brooks. Six major railroads in the Northeast are in reorganization. There are two major railroads in that section doing very well. They are generally the ones where the emphasis will be in the Northeast program.

Mr. JARMAN. I am sorry. Which, the two or the six?

Mr. Brooks. The eight could be involved. The effort is to rescue the essential services of the six which are not now able to pull it off themselves.

Mr. SKUBITZ. Mr. Chairman.

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. Would it not be useful to have the names of the railroads placed in the record at this point?

Mr. JARMAN. Yes.

Would you indicate what these eight railroads are? There are six that are in reorganization.

Mr. Brooks. The six major roads in reorganization are the Boston & Maine, Penn Central, Erie-Lackawanna, Lehigh Valley, Reading, and Central of New Jersey.

Mr. JARMAN. And the other two railroads to which you referred—

Mr. Brooks. The Norfolk & Western and the C. & O.—B. & O.

Mr. JARMAN. Have you any further comments at this time, Mr. Chairman?

Mr. STAFFORD. No, sir.

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. Mr. Chairman, it is good to have you with us this morning. I am personally pleased to see you.

Mr. Chairman, your plan, I assume, is to offer assistance to all bankrupt railroads as they become bankrupt?

Mr. STAFFORD. We hope we have all of them right now.

Mr. SKUBITZ. The preceding witness has just listed the bankrupt railroads—Penn Central, Reading, Boston & Maine. What about Cadillac & Lake City Railroad?

Mr. Brooks. Yes, there are several other smaller roads in reorganization. That is one of them.

Mr. SKUBITZ. New Hope & Ivyland Railroad, is that another?

Mr. BROOKS. That is one of them. We also have the Lehigh & Hudson River.

Mr. SKUBITZ. Mr. Chairman, I would like to place in the record at this point the names of the 10 largest stockholders in each of these railroads. I ask unanimous consent to do so.

Mr. JARMAN. Without objection.

Mr. SKUBITZ. I am intrigued, Mr. Chairman——

Mr. SHOUP. Would the gentleman yield?

Mr. SKUBITZ. Yes.

Mr. SHOUP. This intrigues me. I have no objection. I am wondering if there is some connection there, Mr. Skubitz, that we should know about here at the hearing?

Mr. SKUBITZ. Yes. I noticed a major stockholder in the Reading is the Baltimore & Ohio, the Chesapeake & Ohio, Merrill Lynch and a number of others. I am wondering if we don't do something, what the affect on these stockholder railroads is going to be. I notice also that some of the major banks of the country, those that pushed for raising the interest rate levels, are also major stockholders in these railroads. I believe the facts should be spread upon the record at this moment.

Mr. SHOUP. I have no objection.

[The information referred to follows:]

READING CO., 10 LARGEST STOCKHOLDERS, DEC. 31, 1971

Name	Address	Number of voting shares owned ¹	Percent of total outstanding voting shares
Baltimore & Ohio RR. Co.	Baltimore, Md.	1,071,065	38.3
Chesapeake & Ohio Ry. Co.	Cleveland, Ohio	200,000	7.1
Merrill Lynch, Pierce, Inc.	New York, N.Y.	101,443	3.6
Filor, Bullard & Smyth	do	72,730	2.6
Havenfield Corp.	do	53,109	1.9
H. Hentz & Company, Inc.	do	44,961	1.6
Sunshine Mining Co.	Kailogg, Idaho	44,500	1.6
E. Lowitz & Co.	New York, N.Y.	44,225	1.6
Dunigan & Co.	do	29,500	1.1
OuPont Gore Forgan, Inc.	do	28,965	1.0
Balance owned by 8,858 shareholders		1,108,519	39.6
Total shares outstanding		2,799,017	100.0

¹ Includes 1,399,235 shares of 1st and 2d preferrad stock which have voting rights.

BOSTON AND MAINE CORP., 10 LARGEST STOCKHOLDERS, DEC. 31, 1971

Name	Address	Number of voting shares owned ¹	Percent of total outstanding voting shares
Bomaina Corp. ²	Los Angeles, Calif.	925,820	95.9
Merrill Lynch, Pierce, Fennar & Smith	New York, N.Y.	5,003	.5
A. A. Welsh & Co.	Cleveland, Ohio	2,200	.2
Kohlmeyer & Co.	New Orleans, La.	1,425	.2
Harris Upham & Co., Inc.	New York, N.Y.	1,300	.1
American & Co.	do	1,200	.1
International Railway Equipment Corp.	Boston, Mass.	1,000	.1
Heine & Co.	New York, N.Y.	972	.1
W. E. Hutton & Co.	do	800	.1
Otto Wilts	Oakland, Calif.	769	.1
Balance owned by 1,287 shareholders		25,092	2.6
Total shares outstanding		965,581	100.0

¹ Includes 87,918 shares of 5 percent preferrad stock, which have voting rights.

² Information regarding ownership of Bomaina Corp. is not required to be filed with the Commission.

CAOILLAC AND LAKE CITY RY. CO., 10 LARGEST STOCKHOLDERS, DEC. 31, 1971

Name	Address	Number of voting shares owned	Percent of total outstanding voting shares
J. C. Bonanno.....	19 Welsh Rd., Essex Fells, N.J.	1,505	31.4
Doneld T. Houghtby.....		750	15.6
Clifford F. Lenten.....		206	4.3
James W. Nail.....		200	4.2
H. Howard Noble.....		196	4.1
William H. and Mary R. Bilk.....		125	2.6
Carlton Johnson.....		125	2.6
Charles A. Rogers, Sr.....		79	1.6
E. Carrington and Helen J. Eddy.....		70	1.5
Charles F. Jr. and Jeannette M. Woodbury.....		50	1.0
Balance owned by various shareholders.....		1,494	31.1
Total shares outstanding.....		4,800	100.0

NEW HOPE AND IVYLAND RAILROAD STOCKHOLDERS AT DECEMBER 31, 1971

As of May 31, 1972, New Hope and Ivyland had 68,074 shares of common stock, \$5.00 par value, outstanding and 58,750 shares of preferred stock, no par value. No other information is available.

LEHIGH AND HUOSON RY. CO., 10 LARGEST STOCKHOLDERS, DEC. 31, 1971

Name	Address	Number of voting shares owned	Percent total outstanding voting shares
Lehigh Valley RR.....	New York, N.Y.	10,383	22.1
1st National Bank of New York City.....	do ¹	9,641	20.5
Manufacturers Hanover Trust Co.....	do ²	7,869	16.7
Pennsylvania RR. Co.....	Philadelphia, Pa.	6,766	14.4
Reading Co.....	do	6,302	13.4
1st National Bank of New York City.....	New York, N.Y. ³	5,719	12.2
Jas. H. Oliphant & Co.....	do	57	.1
Charles H. Coster.....	do	33	.1
William C. Wieters.....	Bethlehem, Pa.	27	.1
John J. Beattie, III.....	Warwick, N.Y.	27	.1
Balance owned by 34 stockholders.....		146	.3
Total shares outstanding.....		46,970	100.0

¹ Trustee under Erie RR. Co. 1st consolidated mortgage.

² Trustee under The Central RR. Co. of New Jersey general mortgage dated July 1, 1887.

³ Trustee under Erie Lackawanna RR. collateral trust indenture.

CENTRAL RR. CO. OF NEW JERSEY, 10 LARGEST STOCKHOLDERS, DEC. 31, 1971

Name	Address	Number of voting shares owned	Percent total outstanding voting shares
Reading Co.....	Philadelphia, Pa.	214,401	49.0
Tucker, Anthony & R. L. Day.....	New York, N.Y.	33,760	7.7
Bruns Nordeman & Co.....	do	24,415	5.6
Scheinman, Hochstin & Trotta, Inc.....	do	17,590	4.0
Fae Jospe.....	Hallandale, Fla.	10,870	2.5
Benjamin Rosenbloom.....	Baltimore, Md.	10,822	2.5
Sheldon & Co.....	Cleveland, Ohio	9,700	2.2
C. A. England & Co.....	New York, N.Y.	8,830	2.0
McRab & Co.....	Sarasota, Fla.	7,350	1.7
H. Hentz & Co., Inc.....	New York, N.Y.	6,790	1.5
Balance owned by 560 shareholders.....		93,510	21.3
Total shares outstanding.....		438,038	100.0

PENN CENTRAL TRANSPORTATION CO. STOCKHOLDERS AT DEC. 31, 1971

	Number of voting shares owned	Percent of total outstanding voting shares
Penn Central Co., ¹ Philadelphia, Pa.....	24,113,703	100.0
New York, New Haven and Hartford RR. Corp.....	956,576	3.9
International Utilities Investment Corp.....	500,000	2.4
The Allan Corp.....	390,130	1.6
Herwood & Co.....	159,300	.6
Swiss Bank Corp. (Zurich).....	156,988	.6
Spel & Co.....	150,000	.6
Gerlech & Co.....	116,049	.5
Alleghany Corp.....	100,796	.4
Funi & Co.....	100,000	.4
Carl Marks & Co., Inc.....	93,940	.4
Balance owned by various shareholders.....	21,376,221	88.6
Total shares outstanding (approximate).....	24,100,000	100.0

¹ Penn Central Co., 10 largest stockholders at June 30, 1970: Latest date available derived from verified statement No. 2, ICC Docket No. 35291, Penn Central Transportation Co. Investigation. The holding company, Penn Central Co., does not file annual reports with the commission.

LEHIGH VALLEY RR. CO., 10 LARGEST STOCKHOLDERS, DEC. 31, 1971

Name	Address	Number of voting shares owned	Percent total outstanding voting shares
Penn Central Transportation Co.....	Philadelphia, Pa.....	1,475,561	97.3
Armand Meccheavelli.....	Sacramento, Calif.....	3,500	.2
Reich & Co., Inc.....	New York, N.Y.....	2,100	.1
Milton Motlond.....	Montclair, N.J.....	1,800	.1
Thomas F. Rooney.....	Lafayette, N.J.....	1,800	.1
Annie Tosk.....	New York, N.Y.....	1,500	.1
Filor, Bulterd & Smyth.....	do.....	1,456	.1
Stephen D. Reynolds.....	West Palm Beach, Fla.....	1,170	.1
James J. McCann.....	Poughkeepsie, N.Y.....	900	.1
Joseph N. Nethenson.....	New York, N.Y.....	800	.1
Balance owned by 664 shareholders.....		25,536	1.7
Total shares outstanding.....		1,516,123	100.0

ERIE LACKAWANNA RY. CO., STOCKHOLDERS AS OF DEC. 31, 1971

Name	Address	Number of voting shares owned	Percent of total outstanding shares
Dereco, Inc. ¹	8 North Jefferson St. Roanoke, Va.....	1,000	100.0
Common Stock: Norfolk and Western Ry. Co.....		5,808,204	89.8
Preferred stock (all voting)—class A and class B:			
Merrill, Lynch, Pierce Fenner and Smith.....	New York, N.Y.....	50,232	.8
Deen Witter & Co.....	do.....	35,159	.5
Ketch & Co.....	Boston, Mass.....	32,500	.5
Loeb, Rhoades & Co.....	New York, N.Y.....	24,951	.4
Atwell & Co.....	do.....	15,037	.2
E. F. Hutton & Co.....	do.....	13,919	.2
Paine, Webber, Jackson & Curtis.....	do.....	11,355	.2
C. A. England & Co.....	do.....	9,698	.2
Balance owned by 11,213 stockholders.....		469,073	7.2
Total shares outstanding.....		6,470,128	100.0

¹ Dereco, Inc. 10 largest stockholders at Dec. 31, 1971.

² Norfolk & Western owns all of Dereco's outstanding common stock.

NDRFOLK AND WESTERN RY. CO., 10 LARGEST STOCKHOLDERS AS OF DEC. 31, 1971

Name	Address	Number of voting shares owned	Percent of total outstanding shares
Pennsylvania Company ¹	Philadelphia, Pa.....	1,501,575	15.3
Cudd & Co.....	New York, N.Y.....	410,232	4.2
Merrill Lynch, Pierce, Fenner.....	do.....	212,087	2.2
Hold & Co.....	Washington.....	115,000	1.2
Tegge & Co.....	New York, N.Y.....	109,611	1.1
O'Neill & Co.....	do.....	103,800	1.1
Douglass & Co.....	do.....	100,000	1.0
Hamillfund & Co.....	Denver, Colorado.....	100,000	1.0
Pratt & Co.....	Boston, Mass.....	75,000	.7
Saxon & Co.....	Philadelphia, Pa.....	70,785	.7
Balance owned by 70,869 shareholders.....		7,032,128	71.5
Total shares outstanding.....		9,830,218	100.0

¹ All voting rights to these shares are held by independent voting trustees pursuant to the Commission's orders in Finance Docket No. 21510, et. al.

Mr. SKUBITZ. Chairman Stafford, you referred to a 1 percent tax on all transportation. Are you speaking of a 1 percent tax on truck transportation, waterway transportation, and all other forms? Why do you think that other types of traffic should be required to pay for the reorganization program you envisage?

Mr. STAFFORD. Well, first this is pretty much modeled after the World War II tax proposal. Secondly, for instance, in the railroad area all are part of one system in a sense, even though they are owned by different corporations, and quite frequently you will find that there is an intermodal shipment between truckers using the railroads and vice versa. So we think that it is part of our national transportation system, and that the country's shippers and other carriers should bear part of the cost of this.

Mr. SKUBITZ. Now if I understand you correctly, would a railroad that files bankruptcy—that is the only time they can come to the Commission, correct?

Mr. STAFFORD. That is correct.

Mr. SKUBITZ. In such circumstances, the Commission then would have the right to participate in some way with the reorganization of that railroad?

Mr. STAFFORD. This is our proposal; yes.

Mr. SKUBITZ. If the theory is that the shipper should fear a responsibility, why not raise the tax to 2 percent, raise a billion dollars?

Mr. STAFFORD. Because we really don't think this is necessary, and there is no need of wearing down the shippers of this country with too heavy a tax. They are already carrying a great burden.

Mr. SKUBITZ. Where do you think the money is coming from if Uncle Sam puts money into the program?

Mr. STAFFORD. It is coming from all of us.

Mr. SKUBITZ. All of us, of course, all taxpayers.

Mr. STAFFORD. That is right.

Mr. SKUBITZ. When it comes from all of us, would not the shippers charge be added to his cost?

Mr. STAFFORD. Perhaps a little more broad based.

Mr. SKUBITZ. How many of these railroads that are in bankruptcy today, these 10 railroads, are parts of holding companies?

Mr. STAFFORD. You mean the eight railroads?

Mr. SKUBITZ. Yes.

Mr. BROOKS. Boston & Maine and the Penn Central were each in holding company setups. Lehigh Valley was a subsidiary of Penn Central. C. & O.—B. & O. recently moved into the holding company status; prior to their bankruptcy the Reading and the Central of New Jersey were in the C. & O.—B. & O. corporate family. The way we look at it, when the railroad is in reorganization, it is the ward of a reorganization court, and the control that was previously exercised over it was severed by the entry into reorganization.

So far as the reorganization operations and the emergence from reorganization are concerned, the ties with the holding company aren't nearly as important as they might otherwise be.

Mr. SKUBITZ. This would be a problem in the future though; would it not?

Mr. BROOKS. Well, holding companies——

Mr. SKUBITZ. I mean as railroads became a part of a holding company, and as the railroad profits were put into the holding company to buy other nonrail holdings, a problem of disentanglement crops up. Indeed has not this process helped put some of them in bankruptcy?

Mr. BROOKS. Holding companies do present their special problems, but that kind of corporate structure is not all bad. However, the Commission has asked Congress 2 years running now for jurisdiction to regulate the relationship between carriers that are subsidiaries of the holding companies and the parent holding company. We feel there are dangers lurking in the arrangement that ought to have a Federal agency at least conducting a continual surveillance over it to see that the common carrier system upon which the public must rely is not raped through the arrangement.

Mr. SKUBITZ. Mr. Stafford, the Commission's reorganization proposal uses the guideline that a line must be measured on strictly a profit or loss basis; in short if it lost money, cut the operation out. Am I correct on this point?

Mr. STAFFORD. Yes.

Mr. SKUBITZ. I thought you said they all lost money.

Mr. STAFFORD. That is just one.

Mr. SKUBITZ. I wondered what affect this might have when lines are abandoned to communities that have no other means of transportation to carry their goods. Certainly the Commission would take that into consideration; would it not?

Mr. STAFFORD. Of course we have our matching fund 70-30 proposal in there so that the communities and States that felt strongly about the need for service—they would have this out. You know, this was a part of the Amtrak program. I am not sure that anybody has ever exercised that right on Amtrak.

Mr. SKUBITZ. My view is that it is too high to be meaningful.

Mr. STAFFORD. You mean the 30 percent for the State?

Mr. SKUBITZ. That is right. I think that is high. I think that the whole program should be——

Mr. STAFFORD. Mr. Brooks would like to comment on that.

Mr. SKUBITZ. Very well.

Mr. BROOKS. The Commission has conducted a statistical survey of a representative number of its past abandonment cases and in it we have found that in many abandonment cases, because the line had

not been used very much, there was little or no opposition. But in those cases where there was apparent opposition of genuineness and zeal the Commission set the matters for a hearing. In a good number of cases where a hearing examiner or an administrative law judge was sent out to cities along the line, some of the protestants did not appear, and in some cases no one who had ever used the line appeared as a witness. Sometimes the States who initially protested did not appear as witnesses.

So one of the purposes of the matching fund program is to eliminate ungenueine opposition. The Commission feels that if State really sees a need for preservation of the line or the service, it ought to be willing to make a substantial commitment to a continued service.

Now we are talking here only about service that would otherwise have to be subsidized by a privately owned operation in bankruptcy incapable of rendering the subsidy.

Mr. STAFFORD. However, if Congress in its wisdom decides that our 70-30 proposal is not a proper one, we stand to benefit by their guidance.

Mr. SKUBITS. I don't care to take too much time.

Mr. CHANDLER. May I address two points here. First of all, Mr. Skubitz, I think if you look at our low-density proposal you will recognize a bill which you drafted last year, H.R. 16960, and I would like to say thank you. I drew on it very heavily.

Mr. SKUBITZ. I will have to reread my bill.

Mr. CHANDLER. Second, I think that the point ought to be made that the fear that a large-scale tearing up of railroad tracks is going to come about in what we called restructuring is probably not a justifiable fear. We have tried to stress that there are many areas in which a community or even a single user has service from more than one railroad; where there are duplicative facilities; situations in which, because of past traffic patterns—heavy coal movements, for instance—it was profitable to have two competing parallel railroads where the traffic does not permit it any longer. We think there are many ways to attain economies which don't mean eliminating service to a particular place.

We also think that there can be identified many users and many situations in which with a little planning—several years of planning, it takes time to change patterns of moving goods—that change can be brought about to provide a more efficient and economical service through some other mode. But the time has to be there for the States to build highways, or for the user to change his pattern of distribution, for example.

Given that opportunity he can be led to a more efficient transportation service, and permit some basic savings from the cost of maintaining this huge railroad system. But I don't think we should be afraid that a whole lot of people are going to lose their railroad service right away.

Mr. SKUBITZ. Under the plan that you propose, what will the effect be upon the railroad workers when a line is abandoned?

Mr. CHANDLER. Well, if the line were abandoned, the Commission in normal procedures would provide protection for the individual worker. This would mean that the employee affected would be protected. It would not mean that his position might have to be maintained forever, but the individual would be given the usual protection, which would be guaranteed job or pay for several years.

Mr. SKUBITZ. I have a number of other questions, Mr. Chairman. However, I don't want to take time from my colleagues.

Thank you.

Mr. JARMAN. Mr. Adams.

Mr. ADAMS. Mr. Chairman.

Mr. Stafford, I appreciate you and your staff being here, and there is really so much I want to talk with you this morning that I hardly know where to start, but I will try to keep it crisp.

The first thing is nationalization. You indicate this would cost \$14 billion as an estimate for the Penn Central System. Do you have an estimate for the nationalization cost of the six railroads that are in bankruptcy?

Mr. STAFFORD. Just a second, sir, we will see if we have it.

Mr. CHANDLER. No, sir.

Mr. STAFFORD. That is all we have.

Mr. ADAMS. The Penn Central is all you have?

Mr. STAFFORD. Yes.

Mr. ADAMS. We are talking about, if we nationalize, in your opinion, someplace from \$14 billion up, is that correct?

Mr. STAFFORD. That is correct.

Mr. ADAMS. All right.

Mr. STAFFORD. Assuming that Penn Central's views were right, then theirs would be about \$14 billion.

Mr. ADAMS. All right.

Now the second question I wanted to ask you is that suppose that we had the National Passenger Service Corporation, Amtrack, or its equivalent condemn the right-of-way of the Northeast corridor, so as in effect to take it over to create a passenger system. Can you give us a figure as to what you believe the fair market value of that might be?

Mr. Chandler?

Mr. STAFFORD. John Grady.

Mr. ADAMS. Mr. Grady.

Mr. GRADY. The question you asked, sir, is on the Penn Central, if we took over the track and the right-of-way?

Mr. ADAMS. Right, of the corridor.

Mr. GRADY. The figure for that would be about \$2.3 billion.

Mr. ADAMS. Does that assume that it is an operating company, or that it has ceased operation?

Mr. GRADY. That is an operating company and I might add to that figure the \$2.3 billion of the Penn Central itself. The Penn Central System including the companies where it owns a majority ownership would increase that figure to \$5.2 billion for the track and right-of-way.

Mr. ADAMS. I am not talking about the Penn Central System. In other words, you are saying \$5.2 billion would be the Penn Central—

Mr. GRADY. Alone.

Mr. ADAMS. Alone?

Mr. GRADY. Yes.

Mr. ADAMS. System.

Mr. GRADY. Yes.

Mr. ADAMS. I am asking you if we took simply the right of way of the corridor—I am going to ask questions on what should be done with the rest of it in a moment.

Mr. GRADY. I don't have that information. In fact, the basis of my answer was based on a study done by the engineering firm of Day & Zimmerman confirmed by our review of that study.

Mr. ADAMS. And is that of the corridor of the whole right-of-way system?

Mr. GRADY. That was just done for the Penn Central.

Mr. ADAMS. No.

Mr. GRADY. Yes, the Penn Central.

Mr. ADAMS. I just want the corridor. Can you split that out for me?

Mr. GRADY. No, I cannot.

Mr. ADAMS. Mr. Chandler.

Mr. CHANDLER. No, sir. Perhaps we can do it later.

Mr. ADAMS. Could you give the committee an estimate on that?

Mr. Chairman, I ask unanimous consent that they be allowed to enter in the record at this point the Commission's estimate of what the value is and, in two forms: (a) if it were an operating company where you were taking over that value which under the *Hudson Tube* case will put one value on it, or (b) if it were a company that had ceased operations and you were simply taking the real estate and track at a net liquidation value.

Now, do you have that, Mr. Chandler? The two?

Mr. CHANDLER. Yes.

Mr. ADAMS. Thank you.

Mr. STAFFORD. Now did you preface your question based on a passenger corridor there? If it is going to be the so-called high speed 80 miles-per-hour rate, then the costs are going up tremendously.

Mr. ADAMS. No, I am just asking how much it would cost to acquire the corridor first, Mr. Chandler, not to do anything with it, just if it were to become part of the Amtrak system, and then we will talk about what has to be done with it as a second potential program.

Mr. SHOUP. Would the gentleman yield?

Mr. ADAMS. I yield.

Mr. SHOUP. I wonder if it would help if we could define exactly—they seem to be somewhat confused as to your definition of corridor.

Mr. ADAMS. The Northeast corridor would consist of trackage rights from Washington, D.C., through to Baltimore, Philadelphia and on up through New Jersey and New York, terminating in Boston, using the coastal route.

[The following letter was received for the record:]

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., Aug. 29, 1973.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: At the hearings before the Subcommittee on Transportation and Aeronautics on H.R. 4877, H.R. 5822, H.R. 6591, and H.J. Res. 50, the Commission was asked to estimate the cost of purchasing the Penn Central's right-of-way, tracks, and other facilities in the Northeast corridor; first as an operating entity and second a liquidation value.

Two valuation studies have been performed for the Penn Central Trustees, one by Day & Zimmerman, Inc., which valued all the properties of the Penn Central Transportation Company, and the other by Kuhn, Loeb & Co., which valued the rail facilities in the Washington-Boston corridor. Day & Zimmerman's analysis established a reconstruction cost, new, less depreciation, of \$13.5 billion and a liquidation value of \$3.4 billion for the Penn Central's assets. Kuhn, Loeb estimated that the Washington-Boston corridor properties had a market value of

\$1,165,500. These figures have not been reviewed in detail by the Commission, but we think it reasonable to assume that the lowest valuation of the Northeast corridor at fair market value would exceed \$1 billion, whereas the net liquidation value would be somewhat less.

Sincerely yours,

GEORGE M. STAFFORD,
Chairman.

Mr. ADAMS. All right. Now your bill proposes a series of long-term solutions which appear to me to be fairly similar to what we reported out of this subcommittee in the Surface Transportation Act, in other words, abandonment procedures, some long-term financing, and so on.

Now I would like to put those aside for a moment and talk to you just about title II of your bill which is a lease arrangement, as I understand, is that correct?

Mr. STAFFORD. Yes.

Mr. ADAMS. Do you believe that title II of your bill could be lifted from the bill and made operable as an interim arrangement in and of itself?

Mr. STAFFORD. Could I ask Mr. Chandler to speak to this?

Mr. ADAMS. Please, whoever wants to speak.

Mr. CHANDLER. Mr. Adams, title II of our bill is very similar to a bill which the Commission asked to be introduced last year and which provided for just that, an interim structuring. We have taken that earlier version and added the funding arrangement to it, which is the lease and operating agreement of title II. We thought last year that it could be supported by itself. I think the answer would be, yes, that it could be.

I think I should make one caveat here, however. The likelihood of a successful reorganization may be very substantially affected by the confidence that would be gained by the railroad itself, by the prospective purchasers of lines, and by prospective private investors, from the kind of Federal rehabilitation program which we have proposed in title III. It might be harder to do the job without that in the future on the horizon, but yes, title II could stand by itself.

Mr. ADAMS. I agree with you on that. We have a bill, the Surface Transportation Act, that provides for just that kind of Federal program, and I am trying to think of a temporary or a movement over type solution. Your program seems to perhaps offer an interim method of traveling from bankruptcy or liquidation over to rehabilitation.

Now, do you have an estimate of cost which would be based upon your title II if the Government were to structure another quasi-public corporation similar to Amtrak, provided a designation system as you have in title II for what is essential rail service, and then proceed to lease these lines for a period of time, what would be the cost?

My next question to you, so you can be thinking of it as you go along is, How should it be financially structured? I am talking now about all six railroads in reorganization, since you have indicated, and I agree with you, that you must operate on the whole northeast quadrant as a package because they are too interlocked to take one as separate from the other.

Mr. CHANDLER. I guess I don't understand what figure you want, Mr. Adams.

Mr. ADAMS. All right. Let me try it again.

Mr. CHANDLER. It is not the answer I gave to the chairman earlier, I guess.

Mr. ADAMS. No, it is not, because in that you are in effect taking all of the reorganized lines and hopefully vaulting them back into existence on some kind of a new structure. Let me try it once more.

If the Government were to structure a quasi-public corporation which would be self-liquidating, I could go into more details with it, but it would have preferred stock for the Government, common stock eventually to be distributed through others to do what you say, go to the various of the bankrupt railroads and over into those bankruptcies the leasing out of the essential lines over a period of time for the running of a system. What would be your estimate of the cost to the Government to do this?

Mr. STAFFORD. Mr. Brooks.

Mr. BROOKS. Well, it appears that the only thing you are adding is the cost of running the corporation, whatever that figure might be.

Mr. ADAMS. Give us your figure again.

Mr. BROOKS. \$175 million a year, approximately.

Mr. ADAMS. \$175 million a year operating loss.

Mr. BROOKS. And hopefully it could be worked down quickly.

Mr. ADAMS. But that would be a figure for a potential operating loss. All right.

Now, do you not think it would be better, since you are a regulatory agency, to put responsibility into another Government agency, say the Department of Transportation, to first designate the system as we did basically in Amtrak, and then have you review it as a regulatory agency for the public interest, and then to add another provision which would allow the various local interests, if they wished, to make a presentation if they wanted to come in and share part of the cost or the loss to maintain a particular system?

Mr. STAFFORD. Well, of course, we don't see this as just a business of drawing lines on the map as may have been basic in the construction of the Amtrak lines, and we see this as including many factors of which the only expertise that I am aware of is in my agency and as can come basically from the railroads themselves, who will have to supply the manpower to tell us.

I might ask Mr. Chandler to exclaim further on that.

Mr. CHANDLER. I think the answer is "No," Mr. Adams. The shortest answer I could think of.

Mr. ADAMS. Well, that is a short one.

Mr. CHANDLER. This is a kind of activity that lends itself exceedingly well to the workings and procedures of the regulatory agency. I don't see any conflict of interest in the position of the ICC if it were to make the initial selection. I think we are better equipped to obtain the views of the public, which I feel are vital and which I think were the most particularly lacking item in the selection of Amtrak.

Now it really is not fundamental to the success of the design of the new system who makes the selection, but I think it is very important that a procedure be set out which permits everyone to be heard, which does not rush into this thing.

Mr. ADAMS. All right.

Mr. CHANDLER. And I think we, because of our hearing processes because of the contacts we have with the users and in particular as well as with the carriers themselves, I think we are in a very good position to do a good job of that.

Mr. ADAMS. All right. I agree that we want a process and that you should be involved in it, but I want to indicate to you what the committee's problem is, and what the problem of the Congress is, although I am not sure the Congress really realizes it yet. And that is that on July 2 of this year the court has indicated that the rights of the creditors have run into the constitutional mandate on taking of property so far as the Penn Central is concerned, and, therefore, the trustees must present a plan of liquidation, not reorganization any longer, but liquidation, with an October 1 deadline for carrying this out.

Now can the Commission without using the executive power, or the Congress drawing one—and I don't think we can do it—designate to the trustees in the court of the Penn Central system what offer will be made to take essential rail services out of there so that we can prepare and pass a bill and you can implement it before service stops?

Mr. CHANDLER. No; you can't do that in that length of time, and that is why we tried to structure a three-part program.

Mr. ADAMS. All right.

Mr. CHANDLER. Not just a one-part program.

Mr. ADAMS. All right.

Your program, that is what I am trying to get to, involves in the first instance a lease in to prevent the bleeding in effect so that the creditor's right is covered. If we put that into effect, are you considering leasing the whole Penn Central system, or a designated portion of it, and if so, who designates?

Mr. CHANDLER. The proposal is to take over under lease all of the transportation properties of the railroad in reorganization. That means all the lines.

Mr. ADAMS. What is your price tag for that?

Mr. CHANDLER. Well, our guess was about \$175 million a year over all the railroads.

Mr. ADAMS. So when I asked about the six system, and you answered to me \$180 million per year, you think the others are almost self-liquidating, or were you speaking only of the Penn Central?

Mr. CHANDLER. I am sorry, I was speaking of all of them.

Mr. STAFFORD. Do you want to make some remarks here, Mr. Brooks?

Mr. ADAMS. No, no; I want to get this and then——

Mr. CHANDLER. Our estimate for this number was that it was a total of \$177.3 million for the six major railroads in reorganization. Of that, about \$135 million would be Penn Central alone; \$13 million for Erie, \$11 million for Reading, \$8.6 million for Lehigh, \$6.5 million for CNJ, \$3.5 million for Boston & Maine.

Mr. ADAMS. All right.

Mr. CHANDLER. But just for the Central, you are speaking of about \$134.7 million.

Mr. ADAMS. All right.

Now, who would you have make this payment to these bankruptcy courts? Just directly by the Federal Railroad Administrator, or what mechanism are you recommending be created?

Mr. CHANDLER. We have reached the direct payment of what in effect would be the operating loss. This is really an operating differential subsidy.

Mr. ADAMS. It is an operating loss using a lease system.

Mr. CHANDLER. The payment would be made to the bankrupt railroad by the Secretary of the Treasury. The approval of the accounting of the actual amount of loss to be reimbursed would be in the hands of the Commission.

Mr. ADAMS. All right.

Would you object to a backup—well, do we need a backup condemnation power if the court and the creditors refuse the offer?

Mr. CHANDLER. That is a very good question. I think perhaps we have not really come to grips with it. The assumption upon which we base this proposal is that the railroads in reorganization would be willing to participate on the assumption that there was a chance—more than a chance, a virtual certainty—of some kind of long-term Federal program which would make them once again profitable.

Mr. ADAMS. Now you see this—

Mr. CHANDLER. This is a hope.

Mr. ADAMS. I am going to ask the Secretary of Transportation or his representatives about this tomorrow, because what has upset many of us about their proposal was that it simply says we will throw it into the public arena and hope that everybody behaves, and that they really will want to run a railroad, and that they will continue service. It is the impression of many of us that the people who are in charge now, which are the courts and the creditors, not the stockholders and not the management, have a very minimum level of interest in continuing the running of a railroad.

Mr. CHANDLER. I think that is correct, sir.

Mr. ADAMS. You would rather have money than run the railroad; isn't that correct?

Mr. CHANDLER. I think that is correct. I think that the Secretary's plan is a rather naive hope. I hope that ours is not quite so naive.

Mr. ADAMS. That is why I am asking you if you want something, or some Government agency has to have something behind the offer to the trustees.

Mr. CHANDLER. I can't answer that yet.

Mr. ADAMS. All right.

Mr. CHANDLER. I think we have tried to do it by dangling a carrot out in front, the carrot being money. Now whether we need a stick from behind, I don't know yet, and I hope that you will ask those questions to the people that are running the railroads. We hope to get answers to that kind of question in the filings to be submitted which are due today in our *Ex Parte* 293. They are supposed to have filings in today.

Mr. ADAMS. When are they to be in?

Mr. CHANDLER. They are due today. We would hope to get some answers as to whether there is going to be a willingness to go along on this basis.

Mr. ADAMS. All right.

Mr. CHANDLER. I think what we are trying to do, Mr. Adams, is to find out as we go through our hearing process, our investigation, and as the congressional committees are going through their hearing process, I think we are really trying to find out what is the minimum amount of Federal money that we are going to have to put in to make these carriers an attractive investment once again for the private sector.

These are questions we need to ask the bankers, the railroads, the users, perhaps the State governments. For example, New Jersey already is putting in a substantial amount of money. I don't think I can answer that yet, but I hope we will get the answer pretty soon.

Mr. ADAMS. When will we know, because it takes time. I agree with your premise, we want minimum money to be paid, but it takes time for this committee, this Congress, and the whole process to work. Can you give me a time frame on it?

Mr. CHANDLER. No, I don't think so. I realize that the time is short, or at least it could be short.

Mr. ADAMS. See, why I am asking you is that if this thing collapses in October or in the fall, and it damm well will by the winter quarter on the Penn Central, if it does not by October because I don't see any more direct grants, and we know the first quarter operations during winter season up there, they are always short, and they are going to run out of cash. Now are we going to make it by then, because if we don't somebody is going to come in here and say the Government should nationalize. Can we make it?

Mr. CHANDLER. Well, I think that that is the advantage of the interim funding program we have proposed. If the Congress can't act by that time to come up with some kind of a program, or at least have reached the point in its deliberations where it appears to the bankruptcy courts that some kind of assistance will be forthcoming, I don't think we can make it.

Mr. ADAMS. All right.

Then, Mr. Shoup, I have got some more questions. I didn't mean to take so long.

One is this, that if we put a hammer behind the voluntary lease grant, do you think the Government can condemn on a lease basis? Now I am asking you the fundamental power of the ICC in this case. I think you have power to direct operation over other lines granted in the statute, but I want your opinion as to how far you think you can go, one, and second, what you think we can do for you without actually taking it over by condemnation.

Mr. CHANDLER. Mr. Adams, do you mean with the Commission's present statutory authority, or do you mean under the proposal we have submitted?

Mr. ADAMS. Well, I mean under what you have submitted, or what we dream up, what if the committee provides instead of just offering a lease and the creditors and the courts saying no, that the Government acts, whether it is through a quasipublic corporation, the DOT or yourselves, can we do less than standard condemnation? Could we in effect require them to lease and either operate themselves, or let somebody else operate over them?

Mr. CHANDLER. Well, if I were the General Counsel, which I am not, I think I would venture the legal opinion that the Congress could enact legislation which would make that kind of process possible and lawful. In effect what you would be doing, I would think, would

be substituting something for a right to immediate liquidation and repayment, which the creditors may have if the court decides they have reached the point where the drain is unconstitutional. You would be substituting for that an interim payment of some sort under this lease arrangement, and I would think that that would be constitutional. I think that we have tried to point out that creditors investing—

Mr. ADAMS. Don't they take it subject to the certificate of public convenience and necessity, and therefore, subject to a greater level of Government involvement than the ordinary business?

Mr. CHANDLER. That would be our position, yes, Mr. Adams, and further—

Mr. ADAMS. After you talk with counsel would you—not that I don't take your word, because I do, in other words, when we are talking with our colleagues they are going to ask us if we could do this. Would you offer an opinion?

Mr. STAFFORD. Yes.

[The following letter was received for the record:]

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., April 23, 1973.

HON. JOHN JARMAN,
Chairman, Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the testimony of Chairman George M. Stafford of the Interstate Commerce Commission, whom I accompanied, at the hearings held April 16, 1973, on H.R. 6591, 93d Congress, 1st Session, and other proposals relating to the railroads in the Northeast, a question arose concerning the extent to which the Congress might confer powers upon this agency to deal with the lines of carriers in reorganization. The discussions will be found at pp. 44-46 of the transcript report of the proceedings.

We were discussing Title II of H.R. 6591, providing for interim assistance to railroads undergoing reorganization pursuant to the provisions of Section 77 of the Bankruptcy Act. Under that Title, the lines of such carriers would be leased to the Federal government, which would then be responsible for bearing any losses that might be incurred. Thus, the railroad's estate would be spared the further erosion that continued operations might occasion, and its creditors would be protected against any further, and possibly unconstitutional, decreases in the value of the property which otherwise would be available to satisfy their claims upon a termination of operations and the liquidation of the enterprise. The question arose whether the Congress could write a statute so as to enable the Commission to compel the lease of such lines, or as Congressman Adams put it, ". . . I want your opinion as to how far you think you can go, one, and second, what you think we can do for you without actually taking it over by condemnation."

As I assured the Subcommittee I would, I have discussed the matter with our General Counsel, Mr. Fritz R. Kahn, and he and I are in agreement that it is within the power of the Congress lawfully to enact legislation that would make that kind of compulsory process possible. The Congressional powers to enact legislation affecting the commerce of the country and providing for bankruptcy procedures are plenary and pervasive, subject only, among other constitutional limitations, to the prohibition that there be no deprivation of property without due process.

As we see it, it would be within the discretion of the Congress to revise Section 77 of the Bankruptcy Act in such a way that the tender of the lines for lease by the Commission would be a condition precedent to the court's consideration of the cessation of operations. Such a requirement would not constitute a deprivation of property of the creditors, for, as we anticipated by our proposal, the lease payments made by the Commission would keep the estate intact and thus guarantee the creditors no less than they would be able to obtain if there were a liquidation of the enterprise.

I hope you will find the foregoing fully responsive, but, if I can be of further assistance, please let me know.

Sincerely yours,

GEORGE M. CHANDLER,
Assistant to the Chairman.

Mr. ADAMS. I yield.

Mr. STAFFORD. Could we have just one further comment?

Mr. BROOKS. The Supreme Court has commented on that in the *New Haven Inclusion* cases (399 U.S. 392), pointing out that the investor in railroads is subject to public interest.

Mr. ADAMS. Yes, but that was dictum in that case, was it not basically, because the Government finally required the merger, and the creditors got out of that liquidation and, therefore, the court's comment never was required for the decision.

Mr. BROOKS. Yes it was dictum, but the question was raised as to the creditors' right to a liquidation. And the court did go out on the limb saying though the creditors had a right to liquidation value on the properties taken by Penn Central (under the circumstances of that case), they also were subject to the risks of the extraordinary type you just referred to.

Now putting that back into the context of the problem you presented if the Commission had the power to direct a railroad to operate over the lines of a liquidating railroad, I would assume that the Commission would use that power only on those portions of the lines that would be heavily used, providing essential service, and they might even prove to be profitable, or at least break even. Certainly the Commission would use the power in such a way as to seek that objective, and so you might not have a constitutional problem at all.

Mr. ADAMS. I just want to know if we could get in there and do it in the court, in effect, through a summary type hearing which is close to condemnation.

Mr. BROOKS. I think you also might look at what the courts have done thus far. The history of what they have done in these reorganization cases indicates that we are not anxious to fold up and stop the operation. They have a keen sense of the public's need for the transportation, judges, and I think the trustees.

Mr. ADAMS. But not the creditors.

Mr. BROOKS. The great pressure is from the creditors.

Mr. ADAMS. And they have a constitutional right under the fifth amendment at some point, and I am just asking you to define it.

Mr. BROOKS. I think if we were able to show the court and the trustees that somewhere within the foreseeable future there was a way out, a plan, a mechanism, a definitive way to give the creditors the relief that is contemplated by due process and under section 77, and equity, that the court would continue to be patient and would continue the operation long enough to allow the mechanism to work its way.

Mr. ADAMS. Thank you.

Thank you, Mr. Chairman, Mr. Shoup.

Mr. JARMAN. Mr. Shoup.

Mr. SHOUP. Mr. Chairman, I would like to follow this just a little further. We finally got an answer, Mr. Adams, to what you started to ask a few minutes ago, just the last statement.

I will direct my question to Mr. Brooks, if you don't mind.

I assume this is the feeling of the Commission?

Mr. STAFFORD. Right.

Mr. SHOUP. If we adopt the section 2 here of your plan and the expenditure of the approximate amount of \$180 million a year, I

believe, that on July 2 this plan if adopted prior to that time by Congress will satisfy the court?

Mr. BROOKS. In my opinion there is no question about it. I think Judge Fullam would be satisfied with such a procedure.

Mr. SHOUP. Do you feel this would satisfy the creditors?

Mr. STAFFORD. Mr. Brooks has been working in this whole area for several years now, and I think he is very conversant and has a great understanding with the whole Northeast situation.

Mr. SHOUP. This has been, as you know I am sure, a worrisome thing with the subcommittee here that we are looking at a time element, and it seems as though past history of Congress is until the crisis is upon us we don't act, now we are trying to act in anticipation. If we could present something reasonable through Congress that would preclude this crisis of July 2, do you feel that the creditors would be satisfied?

Mr. BROOKS. We know that a good number of the creditors are creditors in several of the reorganization proceedings.

Mr. SHOUP. And Mr. Skubitz' entry into the record of the major stockholders has some bearing on this?

Mr. BROOKS. Well, the creditors aren't the stockholders, I mean the major creditors are the bond holders, the mortgage holders, the lien holders.

Mr. SHOUP. All right. Go ahead.

Mr. BROOKS. A number of the larger creditors have an interest in several of the railroads in this territory which are in reorganization. It is our understanding that they have been seeking ways toward a unified solution for several roads, realizing that with each road going its own way alone there was little chance of success. Now what we are doing is offering that unified solution as a way to rationalize the entire system and continue the service to the public while freeing for liquidation the redundant facilities, and providing a promise of a viable system in the foreseeable future. I think that is exactly what the creditors want.

Mr. SHOUP. All right.

Now, do you feel that Congress would have to provide more than this operating cost subsidy to the judge for a permanent solution? Certainly this operating cost is only a portion of your total plan for the Northeast, or for the total rail transportation system. Would we have that prior to July 2?

Mr. BROOKS. I think this guarantee against further loss would be enough. If you look at it logically, the judge has up until this time felt that the erosion was not such as to require him to close down the road for constitutional purposes, so we are in effect drawing a line at a point up to which he has justified continued operation. We are guaranteeing him against further loss, with the promise of viability in the foreseeable future.

Mr. SHOUP. Mr. Chairman, you were speaking a short time ago to the additional action on all modes of transportation—

Mr. STAFFORD. Surface.

Mr. SHOUP. [continuing]. To finance this program.

Mr. STAFFORD. Yes.

Mr. SHOUP. And not wishing to ask you whether you belong to the highway trust buster bunch, but I am wondering along the same

way, do you feel that it would be equitable that all forms of surface transportation should contribute toward the highway trust fund to provide facilities for those who operate on the highways?

Mr. STAFFORD. Mr. Shoup, I am glad that question is not before the Commission at this time. We have not been taking a position on the trust fund.

Mr. SHOUP. No; I don't mean to ask you that. I mean to ask if you suggest a 1-percent surcharge?

Mr. STAFFORD. Yes.

Mr. SHOUP. On all?

Mr. STAFFORD. For a limited period of time.

Mr. SHOUP. On all surface transportation.

Then do you feel that the present tax that is subjected to, let's say, those who use the road, the highways, should the others be required to contribute to that too? The diesel that the railroads purchased for their engines, should there be an equitable tax placed to go into the highway trust fund? This is intermodal. It is a total transportation system.

Mr. STAFFORD. Well, we feel that—

Mr. SHOUP. I am only trying to see what your justification is for charging those who use the highways to provide for rail transit.

Mr. STAFFORD. A great number of our trucking companies use the rail systems for their piggyback operations. Many of the items that are shipped part way on the railroad are used or carried further by the trucks, so they are part of a national system in that area. I can see you are turning me around on this thing, trying to get me into that other one.

Mr. SHOUP. No; I am not trying to trap you, Mr. Chairman.

I think perhaps I should mention, Mr. Chairman, my compliments to you, as you recall over the past couple of years you and I have had many discussions about the operation of the ICC, and sometimes not so gentle chiding on my part of what I consider the acceptance of responsibility of the Commission—not you, but as a Commission over the years. So I compliment you for getting involved in this, and getting your feet wet, which I think is one of your responsibilities.

I would agree that I think this properly lies within the Commission's scope of responsibility, rather than as Mr. Adams was talking about, the Department of Transportation. I think it lies more with you. I am somewhat disturbed though in your section 202, and I am wondering if you are jumping in there a little too far. As you know, we have other problems facing us, of course, on the surface transportation, rail transportation. One which will be facing us is the problem of strikes, and strike legislation, and so forth.

It appears to me that the Commission in its zeal to solve this problem of the railroads need restructuring and needs reorganizing, might be assuming the strike-busting or lockout-busting stature. I am disturbed with the language section (d) of section 202. Not that I want to reserve the right to Congress—

Mr. STAFFORD. We don't see this as being a problem in that area. What we are doing, we are pruning in order to make this a successful system that will grow and labor will grow with that.

Mr. SHOUP. I think my point is this, that certainly I think you have every right to order service over a line if there are financial problems, but if it becomes a labor problem will the Commission have the authority to act as Congress did?

Mr. BROOKS. We have some Supreme Court law on the matter in the *Burlington Truck Lines* case (371 U.S. 156) where the Commission gave operating authority to a truck line to provide a service, that was not being provided by a carrier whose employees refused to cross a picket line, and the Court prohibited the Commission from thereafter issuing such authority, noting the danger of trenching upon the jurisdiction of labor law agencies.

Now, I believe that if a railroad was on strike, was not operating because it was on strike, that the power in the Commission could not be exercised in that kind of situation.

Further, usually in those situations where essential transportation is involved, labor is willing to go along and provide that service, cooperate with the carriers to the extent necessary to permit the kinds of operations necessary for—

Mr. SHOUP. Can we turn this around and say company rather than labor?

Mr. BROOKS. A lockout?

Mr. SHOUP. Yes, if necessary.

Mr. BROOKS. Well, we have not had an experience like that. I don't know whether one is likely, but I imagine the same kinds of equities might apply.

Mr. SHOUP. Mr. Chairman, my question is, Would you be adverse to being more specific in your language in section (b) to preclude the occasion which we say by assumption would not happen regarding labor problems?

Mr. STAFFORD. I will let my lawyer speak here for me.

Mr. CHANDLER. As a general comment, Mr. Shoup, we welcome any suggestions anyone may have. This is a document that is being rewritten all the time. If this is an ambiguity there, it has to be fixed, and I would be delighted to see that it is fixed. I would call your attention—

Mr. SHOUP. Mr. Chandler, I think about 3 weeks ago I wrote the ICC on exactly this particular matter when you furnished all of us with a copy of your proposed legislation. At that time I wrote you a comment and to my knowledge I have not received a reply, and that is why I am asking.

Mr. CHANDLER. That is one I have not seen. We will run it down. We did attempt to do what we could to preclude the labor problem by including section 207(b) of the draft which provides that no change in conditions of employment may be made during the time when this restructuring procedure is going on. Hopefully that would at least preclude people like the Penn Central trustees changing the work rules which could very well precipitate a strike.

Certainly it was not the intention of this draft to permit the Commission to move in and attempt to order—I think it would be an unsuccessful attempt—to order the employees of a railroad not on strike to provide service in violation of the picket line.

Mr. SHOUP. Another way to explain this section, I think it would be much simpler to make the section 202 simple language.

Mr. STAFFORD. We can take care of that. I am sorry about the letter, somehow that got by me. I don't recall that. You say that was about 3 weeks ago?

Mr. SHOUP. Well, off the top of my head. It was in direct reply to your request for suggestions from the Congress as to the makeup of your bill.

Mr. STAFFORD. Yes.

Mr. SHOUP. I have no further questions, Mr. Chairman.

Mr. JARMAN. Mr. Chairman, let me get for the record a response to this question.

During the period from 1963 to 1970 the Penn Central's diversification program resulted in a net cash outflow of \$209 million, according to ICC studies. During the same period the Penn Central paid out over \$209 million in dividends. Had this \$500 million been invested in adequate maintenance and for capital improvements is it possible that bankruptcy might have been avoided? Under the program that you recommend the ICC would have certain supervision of management programs. Would it include such items as not allowing dividends or diversification by the company?

Mr. CHANDLER. The part of the proposal to which you refer is that involving the interim restructuring. During that period the railroad would be in reorganization. Of course, it is not paying dividends. As far as other kinds of payments, yes, we had anticipated that the Commission supervision would run to any particular expenditure, or perhaps any class of expenditures, any action that might be taken to change the accounting treatment.

I think that it would be well, however, for the future if the Commission also had the authority, which it has sought previously, to provide general regulation of the relationships between the railroads and their affiliate holding companies, and affiliated noncarrier companies.

Mr. STAFFORD. Just for emphasis, he did say that they are not paying dividends anyway.

Mr. JARMAN. Mr. Adams.

Mr. ADAMS. In other words, you need a power which many of us have felt that you should have to regulate conglomerates or the so-called assets below the line; is that correct?

Mr. STAFFORD. That is what we asked for; yes.

Mr. ADAMS. Do you think you should also have a uniform accounting system in place for all of these railroads?

Mr. CHANDLER. We have a uniform system of accounts, Mr. Congressman.

Mr. ADAMS. I know, but it does not seem to work very well.

Mr. Chairman, I would like unanimous consent at the end of the hearing to place a statement in the record of my own commenting on this.

Mr. JARMAN. It will be so ordered.

[See Mr. Adams' statement on p. 214, this hearing.]

Mr. ADAMS. There was one last problem that we did not touch on, and that is the relationship of the viable roads in the area, the B. & O.-C. & O. and the Norfolk & Western, two of the roads that are presently in bankruptcy. Now this is why some of us are not advocating—at this point we are trying to find out. There has to be an independent entity to deal with the six bankruptcies and the two viable roads. Under your proposal how do the systems that are viable, the Norfolk & Western, and the B. & O.-C. & O., tie into roads that in effect are being subsidized by the Government? I am thinking about traffic patterns, gateways, and so on.

Mr. BROOKS. What we are dealing with here is the type of thing the Commission ordinarily considers in the big merger cases, competi-

tive effects. If a bankrupt line is going to be upgraded to a point where its competitive position viz-a-viz a nonbankrupt line is radically changed, a change in the flow of traffic is likely. This is one of the important factors the Commission would look at in the proceedings when it is—

Mr. ADAMS. Would you let it happen first or later?

Mr. BROOKS. Throughout our testimony we have been trying to convey to the members of the committee that this is a community problem. We would canvass the participants, the railroads, the communities, and so on.

Mr. ADAMS. Let me put this thing in place. Do you suspend changes until everybody goes through the process, or do you let the change occur first and then let everybody pick up the pieces later?

Mr. BROOKS. I see it as a dynamic situation, continually evolving. The affluent railroads would anticipate the possible effects and place before the Commission their proposals for inclusion.

Mr. ADAMS. Let me make it very, very specific here why I think that we needed, in effect, an introceeding. In other words, you are going to have to designate it.

You have coming across the top the Erie & Lackawanna, which has basically a debt organization structure; it could come out of reorganization with some changes. Then you come to the little Delaware & Hudson which sits in the middle, and 60 percent of its traffic is, in effect, overhead traffic, so depending whether the traffic goes onto this system or that system it will go in or out of existence.

You have got the Boston & Albany in central Massachusetts with the Boston & Maine coming across the top of the mountains. You throw the traffic into one as opposed to into the other and you have a gigantic effect.

The Reading, the Jersey Central, the Lehigh Valley, and the Penn Central are all, to a degree, redundant systems in the same area. The judgment as to which one lives and which one dies will occur as you move in to do this thing. What I am asking you is do you want to freeze the whole thing so that everybody must continue to do what they are doing now, and then take it a little piece at a time, which under your present procedures will take us until about 2006, or do you want to say, We are going to go to a new system which will begin to reduce the losses, and if so who is going to decide who survives and who prospers? In other words, where the freight is, what lines it goes over? The Commission?

Mr. STAFFORD. I think we do.

Mr. ADAMS. You do that?

Mr. STAFFORD. Yes.

Mr. ADAMS. You do it as he mentioned?

Mr. STAFFORD. Yes.

Mr. ADAMS. Step by step by step?

Mr. CHANDLER. Not quite.

Mr. STAFFORD. Not at a step.

Mr. CHANDLER. Mr. Adams, I think this is the problem with trying to pull out title II.

Mr. ADAMS. We have another bill, Government loans perhaps, and a number of other things, but what we are dealing with is the keystone of how we get from right here today through this thing.

Mr. CHANDLER. That is right, but you have suggested that by enacting some kind of interim measure the Congress would have more time to look at the long-term measure.

Mr. ADAMS. I have not suggested that at all.

Mr. CHANDLER. I am sorry. I misunderstood you.

Mr. ADAMS. No, I have gotten that from you.

Mr. CHANDLER. OK.

Mr. ADAMS. I am not saying that is it. I think you may have to go in there and say bang, and divide up, but you tell me.

Mr. CHANDLER. Then we are in agreement. I think that we can use the interim proposal to start to bring the bankrupts out, or at least to go in there, and frankly nobody is doing it now. You have to get in there and find out how much of those systems are worth keeping. Somebody has to do it, whether it is the ICC or a new corporation, or DOT, or someone. The courts and the trustees don't seem to be doing it.

Mr. ADAMS. Well, they can't.

Mr. CHANDLER. At the same time you have to start your selection procedure for the basic long haul system, and that is a system which is going to probably include segments of all or most of the bankrupts and it is certainly going to include segments of the healthy roads. By healthy roads I mean all of those who are not in bankruptcy.

Then we include both kinds of railroads—those in reorganization, those that are not. When we are talking about a piecemeal rebuilding, or restructuring, we are really talking about what to do right now to keep the vital services that the bankrupt railroads are performing from stopping. But that has to melt in—

Mr. ADAMS. Right at that point, your lease arrangement, or your lease subsidy arrangement, if it goes to just the essential lines, is going to shift the traffic pattern. Are you proposing that we do that right at the beginning, or do you just keep everything running in its present pattern?

Mr. CHANDLER. I don't see why it is going to shift the traffic pattern.

Mr. ADAMS. Well, because of the essential services, I will take one that I know you are familiar with, which is the Lehigh, Reading, Jersey Central, Penn Central operation. Essential services in that area do not require that all of those roads run.

Now, are you going to just run some of them, or all of them? Now that essential decision has to be made right as you start this.

Mr. CHANDLER. I think you are probably going to end up running almost all of them, not as main lines but you are going to have people serving—

Mr. ADAMS. Wait a minute. When you say not as main lines, when you shift that traffic off of one and on to another, you change the whole gateway system for the connecting viable lines, and also for the other bankrupt lines. This thing is all intertwined.

Mr. CHANDLER. That is right.

Mr. ADAMS. Now you are willing to do that at the beginning of this process. I am not saying you should, I think maybe you have to—but just tell me.

Mr. CHANDLER. Well, I think we are willing to start in that direction, but we would like to have the selection process for the main line system go along as quickly as possible so that in dealing with the bankrupts, we have this as a goal—we have this decision made in a rational way. I would hate to go in there without that overall design having been finally accomplished, because then there is a much greater chance of making mistakes.

We need to have that picture drawn as quickly as possible, and we have to make some pretty tough decisions. When those decisions are made, it means who is going to survive and who is not, tough decisions, like, are you going to keep the Delaware and Hudson connection into New England to provide a competitive system.

Mr. ADAMS. Precisely.

Mr. CHANDLER. Are you going to need it?

Mr. ADAMS. Are you or somebody going to recommend that to this committee when we start this thing? In other words, every creditor and every railroad up there in that area is going to watch what comes out, and if you designate a system, we can use the Delaware and Hudson because it is a nice little example up there—it is a connecting line. When you designate your system in the original instance, both those that connect with it, that line itself and those that come in from the West are going to want to know. Now are you going to tell them at the beginning or are you going to say it will be this way, but we will let you all have a hearing? Just how are we going to start this?

Mr. CHANDLER. I think we would want to tell them as soon as possible, and it might take—our plan has cranked a year in here to make that determination.

Mr. ADAMS. You let it out by pieces?

Mr. CHANDLER. I would hope that it might not take that long.

Now, in the meantime though, you have another problem, and maybe we are using the wrong word when we say essential services. We have the problem of serving individuals who are not going to be on the main lines. We really are talking, in our interim program, in effect, about maintaining the status quo for a while, so that people who rely on rail service will continue to have it while we are getting this thing straightened out, and make those decisions. Those decisions have to be made on the basis of examination of the traffic patterns, and of the engineering characteristics of the lines. When we come up with some answers, somebody has got to live and somebody has got to die. They are going to be hard ones, but in the meantime, we will try to keep the service going so that the little guy does not die. We will give him a chance to get out and find some solution to his problem if he turns out not to be on a line that is going to be part of the basic system.

Mr. ADAMS [presiding]. Thank you.

I apologize, Mr. Metcalfe, I didn't see you come in. The Chair recognizes you.

Mr. METCALFE. I have no questions at this time, Mr. Chairman.

Mr. ADAMS. Mr. Skubitz?

Mr. SKUBITZ. I have placed in the record the list of 10 railroads and their largest stockholders.

Mr. STAFFORD. You mean those in the Northeast quadrant.

Mr. SKUBITZ. Yes.

Does the Commission have data of the 10 largest creditors of each of these companies?

Mr. STAFFORD. We can supply that for the record.

Mr. SKUBITZ. I ask unanimous consent, Mr. Chairman, that the names of the 10 largest creditors of each of the railroads be placed in the record.

Mr. ADAMS. Without objection, so ordered.

[The following information was received for the record:]

RAILROADS IN REORGANIZATION SUMMARY OF DEBT AND EQUITY, DEC. 31, 1972

	Total long-term debt ¹	Total shareholders' equity	Total debt and equity
Boston & Maine Corp.....	\$70,687,530	\$66,804,760	\$137,492,290
Central RR. Co. of New Jersey.....	64,786,494	(18,602,480)	46,184,014
Erie Lackawanna Ry. Co.....	309,750,386	37,635,692	347,386,078
Lehigh Valley RR. Co.....	99,466,293	31,646,042	131,112,335
Penn Central Transportation Co.....	1,918,156,573	856,661,771	2,774,818,344
Reading Co.....	94,755,580	144,502,353	239,257,933
Total.....	2,557,602,856	1,118,648,138	3,676,250,994

¹ Includes long-term debt due in 1 year.

BOSTON & MAINE CORP., LONG-TERM DEBT, DEC. 31, 1972

I. DEBT TO DEBT PLUS EQUITY RATIO

	Amount	Percen
Debt:		
Long-term debt due in 1 year.....	\$178,768	
Long-term debt due after 1 year.....	70,508,762	
Total long-term debt.....	70,687,530	51.4
Equity:		
Common stock.....	877,663	
Preferred stock.....	8,791,800	
Capital surplus.....	99,295,882	
Retained Income (deficit).....	(42,160,585)	
Total equity.....	66,804,760	48.6
Total debt plus equity.....	137,492,290	100.0

II. SUMMARY OF LONG-TERM DEBT¹

	Total outstanding	Due within 1 year	Due after 1 year
Funded debt unmatured.....	\$176,141	\$73,255	\$102,886
Equipment obligations.....	210,402	105,513	104,889
Debt in default.....	69,460,237		69,460,237
Amounts payable to affiliates.....	840,750		840,750
Total.....	70,687,530	178,768	70,508,762

¹ Details on following page.

BOSTON & MAINE CORP., LONG-TERM DEBT, DEC. 31, 1972—Continued

III. Schedule of long-term debt:

A. Debt in default:

Mortgage bonds:

(1) Boston and Maine Corp., 6 percent series TT, Due July 1, 1970. Trustee—First National Bank, Boston. Both coupon (\$100, \$500 and \$1,000) and registered (\$1,000) listed on New York Stock Exchange.....	\$46,337,876
(2) Boston and Maine Railroad income mortgage, 4½ percent, Series A, Due July 1, 1970. Trustee—State Street Bank & Trust Co. Boston and Howard B. Phillips, individual trustee. Registrar—State Street Bank & Trust Co., Boston or Chase Manhattan Bank, N.Y. Both coupon (\$500 and \$1,000) and registered (\$1,000) listed on New York and Boston Stock Exchanges....	18,826,500

Obligations held by U.S. Government resulting from part V loan defaults:

(1) Boston & Maine R.R. Guaranteed Collateral Trust 5 percent, Due June 1, 1974.....	900,000
(2) Boston & Maine R.R. Guaranteed Collateral Trust 5 percent, Due Jan. 1, 1976.....	1,800,000
(3) Guaranteed Note due Oct. 15, 1977.....	516,667

Short term notes in default:

(1) Collateral Note, 7½ percent, due June 15, 1970.....	484,994
(2) Promissory Note, 8½ percent, due Feb. 20, 1970.....	594,200

Total debt in default.....	69,460,237
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B. Funded debt unmatured:

Conditional sales agreements—Road-various:

Due within 1 year.....	102,886
Due after 1 year.....	73,255
Total.....	176,141

C. Equipment obligations:

Conditional or deferred payment contracts New England Merchants National Bank:

Due within 1 year.....	104,889
Due after 1 year.....	105,513
Total.....	210,402

D. Amounts payable to affiliated companies:

Northern Railroad.....	² 739,474
Stony Brook Railroad.....	² 101,276

Total.....	840,750
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Total long-term debt.....	70,687,530
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¹ Approximately \$14 million of these bonds are owned by the Metropolitan Life Insurance Company, Connecticut Mutual Life Insurance and the Passaconaway Company. The latter is subsidiary of the Amoskeag Company which in turn controls the Class I Bangor and Aroostock Railroad Company. The Passaconaway Company purchased on March 12, 1970 the bonds it owns from the Equitable Life Insurance Society of the United States and the Northwestern Mutual Life Insurance Company.

² Balances represent amounts for leased property and not replaced, to be settled at expiration of leases.

CENTRAL RAILROAD OF NEW JERSEY, LONG-TERM DEBT, DEC. 31, 1972

I. DEBT TO DEBT PLUS EQUITY RATIO

	Amount	Percent
Debt:		
Long-term debt due within 1 year.....	\$2,346,856	
Long-term debt due after 1 year.....	62,439,638	140.3
Total long-term debt.....	64,786,494	
Equity:		
Common stock.....	21,901,900	
Capital surplus.....	4,772,368	
Retained income.....	(45,276,748)	
Net deficit.....	(18,602,480)	(40.3)
Total debt plus equity.....	46,184,014	100.0

II. Schedule of long-term debt:

A. Debt in default:

(1) C.R. of N.J. general mortgage 3½ due 1987 Trustee-Manufacturers Hanover Coupon (\$500, \$1,000) and registered (\$1,000 and multiples). Listed: New York Stock Ex- change, Philadelphia-Baltimore-Washington Stock Exchange.....	\$42,890,000
(2) Government guaranteed bonds:	
(a) 5 percent trust notes (1976).....	9,237,736
(b) 5 percent trust notes (1978).....	4,170,502
(3) Promissory Notes 4 percent (1974).....	500,000
(4) Notes 6 percent.....	344,130
(5) Construction agreements.....	66,114
Total debt in default.....	57,208,282

B. Equipment obligations:

3 various issues:	
due within 1 year.....	2,346,856
due after 1 year.....	¹ 2,831,156
Total.....	5,178,012

C. Receivers and trustees securities:

(1) Trustees certificates—guaranteed by DOT under "Emergency Rail Services Act of 1970"	2,400,000
Total long-term debt.....	64,786,494

¹ This amount is approximate because it is a balancing figure. Since CNJ had not filed its 1972 Annual Report by May 2, 1973, most of the items shown above were derived from Annual Report balances as of December 31, 1971. However, since carrier is in reorganization, change in overall debt structure between years will be negligible. Amount shown for total debt was derived from December 31, 1972 condensed balance sheet, Form CBS, filed by CNJ.

ERIE LACKAWANNA, LONG-TERM DEBT, DEC. 31, 1972

I. DEBT TO DEBT PLUS EQUITY RATIO

	Amount	Percent
Debt:		
Long-term debt due within 1 year.....	\$9,502,460	
Long-term debt due after 1 year.....	300,247,926	
Total long-term debt.....	309,750,386	89.2
Equity:		
Common stock.....	1,000,000	
Capital surplus.....	67,517,585	
Retained income.....	(30,881,893)	
Total equity.....	37,635,692	10.8
Total debt plus equity.....	347,386,078	100.0

ERIE LACKAWANNA, LONG-TERM DEBT, DEC. 31, 1972—Continued

II. SUMMARY OF LONG-TERM DEBT¹

	Total outstanding	Due within one year	Due after one year
Funded debt unmatured.....			
Equipment obligations.....	\$56,641,793	\$9,502,460	\$47,139,333
Debt in default.....	250,608,950		250,608,950
Amounts payable to affiliates.....	2,499,643		2,499,643
Total.....	309,750,386	9,502,460	300,247,926

¹ Details on following pages.

III. Schedule of long-term debt:

A. Debt in default:

- (1) Erie R.R.—Ohio Division first 7, due 1980, Trustee—Cleveland Trust Co., coupon (\$1,000) registered (\$1,000, \$5,000, \$10,000), not listed. \$10,995,000
- (2) Chicago and Erie R.R. 5 percent, due 1982, Trustee—Man, Hanover, coupon (\$1,000), registered (\$1,000). Listed: New York, London, and Amsterdam Stock Exchange. 11,997,000
- (3) Erie R.R. 3½ series F & G, Trustee—First National City Bank, coupon (\$1,000) and registered (\$1,000, \$5,000, \$10,000). Listed: New York Stock Exchange:
 - Series F due 1990..... 32,830,000
 - Series G due 2000..... 38,677,000
- (4) Erie R.R. general mortgage 4½ A, due 2015, Trustee—Bankers Trust, coupon (\$250, \$500, \$1,000) and registered (\$1,000, \$5,000, \$10,000), Listed: New York Stock Exchange. 27,851,000
- (5) Delaware, Lackawanna, and Western R.R. 4 percent A, due 1993, Trustee—Marine Midland, coupon (\$25, \$100, \$500, \$1,000) and registered (\$1,000 and multiples), Listed: Unlisted trading on American Stock Exchange. 6,265,300
- (6) D., L., & W. R.R. 4 percent B, due 1993, Trustee—Marine Midland, denominations same as (5) above, Listed: Unlisted trading on American Stock Exchange. Trading suspended in April 1970. 2,020,950
- (7) Morris and Essex R.R. 3½, due 2000, Trustee—Morgan Guaranty, coupon (\$1,000), registered (\$1,000), Listed: New York Stock Exchange. 32,640,000
- (8) D., L., & W. R.R. collateral, 4 percent—6 percent, due 2042, Trustee—First National Bank of Jersey City, coupon (\$50, \$100, \$500, \$1,000) and registered (\$1,000 and multiples), Listed: New York Stock Exchange. 9,567,850
- (9) N.Y., L., & W. R.R. 4 percent Series A and 4½ series B, due 1973, Trustee—Marine Midland, coupon (\$1,000), registerable as to principal, Listed: New York Stock Exchange:
 - Series A..... 11,086,000
 - Series B..... 7,328,000
- (10) D., L., & W. R.R. 5 percent series C, due 1973, Trustee—Marine Midland, coupon (\$100, \$500, and \$1,000), registered (\$1,000 and multiples), Listed: New York Stock Exchange. 4,997,800

ERIE LACKAWANNA, LONG-TERM DEBT, DEC. 31, 1972—Continued

III. Schedule of long-term debt—Continued

A. Debt in default—Continued

(11) D., L., & W. R.R. income 5, due 1993, Trustee—Manufacturers and Traders Trust, Buffalo, coupon (\$100, \$500, \$1,000) and registered (\$1,000 and multiples), Listed: New York Stock Exchange	\$2, 283, 300
(12) D., L., & W. R.R. VC and S.V. Division, 3 percent-5 percent due 1992, Trustee—Morgan Guaranty, coupon (\$100, \$500, \$1,000) and registered (\$1,000 and multiples), Listed: New York Stock Exchange	1, 970, 900
(13) Warren R.R. 3½, due 2000, Trustee—Morgan Guaranty, coupon (\$1,000), registerable as to principal, Listed: New York Stock Exchange	974, 000
(14) D., L., & W. R.R. Warren Division, 4 percent-6 percent, due 1992, Trustee—Chemical Bank, coupons (\$50, \$100, \$500, \$1,000) and registered (\$1,000 and multiples), Not listed	975, 300
(15) D., L., & W. R.R. O. & S. Division, 4 percent-6 percent, due 1993, Trustee—United States Trust Co., coupon (\$50, \$100, \$500, \$1,000) and registered (\$1,000 and multiples), Not listed	678, 650
(16) D., L., & W. R.R. Pennsylvania Division 4¾ Series A, due 1980, Trustee—Morgan Guaranty, sold privately to Metropolitan Life Insurance Co	3, 974, 000
(17) D., L., & W. R.R. Pennsylvania Division, series A 5 and series B 4½, due 1985, Trustee—Bankers Trust, coupons (\$100, \$500, \$1,000) and registered (\$1,000 and multiples), Listed: New York Stock Exchange:	
Series A	2, 302, 700
Series B	2, 618, 000
(18) Erie R.R. income deb. 5, due 2020, Trustee—Union Commerce Bank, Cleveland, coupon (\$1,000) and registered (\$100, \$500, \$1,000, \$5,000, and multiples), Listed: New York Stock Exchange	26, 576, 200
(19) Guaranteed collateral trust notes 6½—guaranteed by U.S. Government under part V loan program	12, 000, 000
Total debt in default	<u>250, 608, 950</u>

B. Equipment Obligations:

Conditional or deferred payment, 73 various issues:

Due within 1 year	9, 502, 460
Due after 1 year	47, 139, 333

Total equipment obligations 56, 641, 793

C. Amounts payable to affiliates:

(1) Dereco, Inc.	2, 065, 535
(2) Pennsylvania Coal Co.	206, 718
(3) Northwestern Mining and Exel. Co.	227, 390

Total payable to affiliates 2, 499, 643Total long-term debt 309, 750, 386

LEHIGH VALLEY RR CO., LONG-TERM DEBT, DEC. 31, 1972

I. DEBT TO DEBT PLUS EQUITY RATIO

	Amount	Percent
Debt:		
Long-term debt due within 1 year.....	\$822,395	
Long-term debt due after 1 year.....	98,643,898	
Total long-term debt.....	99,466,293	75.9
Equity:		
Common stock.....	60,760,756	
Capital surplus.....		
Retained income.....	(29,114,714)	
Total equity.....	31,646,042	24.1
Total debt plus equity.....	131,112,335	100.0

II. SUMMARY OF LONG TERM DEBT¹

	Total outstanding	Due within 1 year	Due after 1 year
Funded debt unmatured.....	7,388,530	822,395	6,566,135
Equipment obligations.....	61,877,750		61,897,750
Debt in default.....	30,080,013		30,080,013
Amount payable to affiliates.....			
Total.....	99,466,293	822,395	98,643,898

¹ Details on following pages.

III. Schedule of long-term debt:

A. Debt in default:

Mortgage Bonds:

- (1) Lehigh V. Term. Ry. 5 due 1979, Trustee—Manu. Hanover, coupon (\$1,000) and registered (\$1,000), Listed New York Stock Exchange \$5,721,000
- (2) Lehigh and Lake Erie R.R. 4½ due 1994 Trustee—Chemical Bank, denominations not given, not listed. 1,899,000
- (3) Lehigh V. R.W. 4½ due 1974, Trustee—Girard Trust, Phil., coupon (\$1,000) and registered (\$1,000), listed: New York, Philadelphia-Baltimore-Washington, and London Stock Exchanges. 9,189,000
- (4) Lehigh V. Harbor Ter. 5 due 1984, Trustee—First National City Bank, coupon (\$500, \$1,000) and registered (\$1,000 and multiples), listed New York Stock Exchange. 4,765,000
- (5) Lehigh V. R.R. 4½ due 1989, Trustee—Fidelity Bank, Philadelphia registered (\$1,000), listed: Philadelphia-Baltimore-Washington Stock Exchange. 1,988,000
- (6) Lehigh V. R.R. gen. cons. due 2003, Trustee—Chemical Bank, coupon (\$250, \$500, \$1,000) and registered (\$1,000 and multiples), listed: New York and Philadelphia-Baltimore-Washington Stock Exchanges:
 - Series A 4..... 4,925,000
 - Series B 4½..... 2,051,500
 - Series C 5..... 1,723,750

LEHIGH VALLEY RR CO., LONG-TERM DEBT, DEC. 31, 1972—Continued

III. Schedule of long-term debt—Continued

A. Debt in default—Continued

Mortgage Bonds—Continued

(7) Lehigh V. R.R. gen. cons. due 2003, Trustee—Chemical Bank, coupon (\$250, \$500, \$1,000) and registered (\$1,000 and multiples), listed: New York and Phil- adelphia-Baltimore-Washington Stock Exchanges:	
Series D 4.....	\$10,475,000
Series E 4½.....	4,493,250
Series F 5.....	3,482,250

Total mortgage bonds..... \$18,450,500

U.S. guaranteed loans (in default):

(1) Serial collateral notes due 1974.....	2,800,000
(2) Collateral trust notes 5 due 1975.....	2,664,000
(3) Marine midland trust 4½ due 1970.....	1,125,000
(4) Collateral trust notes—Marine Midland.....	2,531,000
(5) Serial collateral trust notes—4½ Marine Midland.....	2,165,000

Total U.S. guaranteed loans in default..... 11,285,000

Total debt in default..... 61,997,750

B. Equipment Obligations:

Conditional or Deferred Payment Contracts:

Due within 1 year.....	\$22,395
Due after 1 year.....	6,566,135

Total equipment obligations..... 7,388,530

C. Amounts payable to affiliates:

(1) Ironton Railroad Company—open account.....	65,409
(2) Penn Central Co. prior amounts due through June 21, 1970—date of P. C. reorganization.....	16,391,803
(3) Penn Central Co.—amounts due subsequent to reorganization date.....	10,553,733
(4) Penn Central Co.—redemption of Pa., N.Y. Canal and R.R. Co. Cons. Bonds—April 1, 1969.....	2,809,844
(5) Abalan Corporation—open account.....	2,775
(6) Lessees Buffalo Creek—open account.....	256,449

Total amounts payable to affiliates..... 30,080,013

Total long-term debt..... 99,466,293

PENN CENTRAL TRANSPORTATION CO., LONG-TERM DEBT, DEC. 31, 1972

I. DEBT TO DEBT PLUS EQUITY RATIO

	Amount	Percent
Debt:		
Long-term debt due within 1 year.....	\$57,574,502	
Long-term debt due after 1 year.....	1,860,582,071	
Total long-term debt.....	1,918,156,573	69.1
Equity:		
Common stock.....	241,137,030	
Capital surplus.....	1,090,013,568	
Retained income.....	(474,488,827)	
Total equity.....	856,661,771	30.9
Total debt plus equity.....	2,774,818,344	100.0

PENN CENTRAL TRANSPORTATION CO., LONG-TERM DEBT, DEC. 31, 1972—Continued

II. SUMMARY OF LONG-TERM DEBT¹

	Total outstanding	Due within 1 year	Due after 1 year
Funded debt unmatured.....	\$183,172,717	\$1,164,339	\$162,008,378
Equipment obligations.....	386,849,312	56,410,163	330,439,149
Receivers' and trustees' securities.....	100,000,000		100,000,000
Debt in default.....	1,103,336,819		1,103,336,819
Amount payable to affiliates.....	164,797,725		164,797,725
Total.....	1,118,156,573	57,574,502	1,860,582,071

¹ Details on following pages.

III. Schedule of long-term debt:

A. Debt in default:

Mortgage Bonds:

- (1) Carthage and Adirondaok R.R. first gold 4 percent, due 1981; Trustee—Manufacturers Hanover Trust Co., N.Y., coupon, \$1,000; registerable to principal; also fully registerable Listed: New York and London Stock Exchanges..... \$860,000
- (2) Kanawha and Michigan R.R. Co. first gold 4 percent, due 1990; Trustee—Manufacturer Hanover Trust, coupon, \$1,000; registerable as to principal listed: New York Stock Exchange..... 1,539,000
- (3) Mohawk and Malone R.R. consolidated gold 3½ percent, due 2002, Trustee—Morgan Guaranty, coupon (\$1,000), registered (\$1,000, \$5,000, \$10,000). Not listed..... 3,068,000
- (4) New Jersey Junction Railroad Co. first gold 4, due 1986, Trustee—Morgan Guaranty, coupon (\$1,000), registered (\$1,000) Listed: New York Stock Exchange..... 1,178,000
- (5) New York and Putnam R.R. first consolidated gold 4, due 1993, Trustee—Manufacturer Hanover, coupon \$1,000, registerable. Listed: New York and London Stock Exchanges... 1,574,000
- (6) New York Central and Hudson River R.R. gold 3½, due 1997, Trustee—Manufacturer Hanover, coupon (\$1,000) and registered (\$1,000, \$5,000, \$10,000, \$50,000). Listed New York and London Stock Exchanges..... 75,762,000
- (7) New York Central R.R. Hudson River R.R. 4½, series A, due 2013, Trustee—Morgan Guaranty, coupon (\$500, \$1,000^b and registered \$1,000, \$5,000, \$10,000, \$50,000). Listed New York Stock Exchange..... 92,908,000
- (8) N.Y.C. R.R. ref. and impr. 5 percent series C due 2013, Trustee—Morgan Guaranty, coupon (\$100, \$500, \$1,000) and registered (\$1,000, \$5,000, \$10,000, \$50,000). Listed New York Stock Exchange..... 63,966,000

PENN CENTRAL TRANSPORTATION CO., LONG-TERM DEBT, DEC. 31, 1972—Continued

III. Schedule of long-term debt—Continued

A. Debt in default—Continued

Mortgage Bonds—Continued

(9) Penn R.R. gen 4½ D, due 1981, Trustee—Girard Trust Bank Philadelphia, Pa., coupon (\$1,000) and registered (\$1,000, \$5,000, \$10,000 and multiples of \$10,000). Listed New York Stock Exchange and Philadelphia, Baltimore, and Washington Stock Exchange-----	\$43,641,000
(10) Penn R.R. gen 4½ E, due 1984, Trustee—Girard Trust, coupon (\$1,000) and registered (\$1,000, \$5,000 and multiples of \$5,000.) Listed New York Stock Exchange--	36,143,000
(11) Penn R.R. gen. 3½ F, due 1985, Trustee—Girard, coupon (\$1,000) and registered (\$1,000, \$5,000, and multiples). Listed New York Stock Exchange-----	45,278,000
(12) Penn R.R. gen. 3 G, due 1985, Trustee—Girard Trust Bank, coupon (\$1,000) and registered (\$1,000 and multiples). Not listed-----	42,724,000
(13) Penn R.R. gen. 4½ H, due 1986, Trustee—Girard Trust, both coupon and registered (\$1,000). Not listed-----	8,666,000
(14) Penn Central Co. first mortgage 5, due 1994, Trustee—Fidelity Bank—Philadelphia, registered (\$100, \$500, \$1,000). Not listed-----	34,025,800
(15) New York, New Haven and Hartford R.R. Harlem River 4½ A, due 1973 Trustee—United States Co., New York, coupon, (\$1,000) and registered (\$1,000, \$5,000, \$10,000, \$50,000, \$100,000). Listed: New York Stock Exchange-----	6,647,000
(16) West Shore R.R. Co. 4, due 2361, Trustee—Manufacturer Hanover, coupon (\$1,000), registered (\$500, \$1,000, \$10,000). Listed New York Stock Exchange-----	33,016,500
Total mortgage bonds in default-----	<u>490,996,000</u>

Collateral trust bonds:

(1) New York Central R.R. collateral trust due 1980. Trustee—State Street Bank and Trust. Not listed. 5½ percent, 5½ percent and 6.0 percent-----	18,937,125
(2) N.Y. C. R.R. collateral trust 5 percent due 1974 (Guaranteed under part V authority ICC act)-----	16,900,000
(3) N.Y. C. R.R. 6 due 1990. Trustee—Irving Trust, coupon (\$100, \$500 and \$1,000) and registered (\$1,000). Listed New York Stock Exchange, balance \$7,799,900. Portion in default \$800,000-----	800,000

PENN CENTRAL TRANSPORTATION CO., LONG-TERM DEBT, DEC. 31, 1972—Continued

III. Schedule of long-term debt—Continued

Debt in default—Continued

Collateral trust bonds—Continued

(4) Penn Central 6½, due 1993, Trustee—Irving Trust, coupon (\$100, \$500, \$1,000) and registered \$1,000, listed New York Stock Exchange. Balance \$7,641,800. Portion in default \$728,000-----	\$728, 000
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Total collateral trust bonds-----	37, 365, 125
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Miscellaneous obligations:

(1) Pittsburgh National Bank, maturity date 1970, interest rate 4½ percent----	72, 222
(2) Central Penn Nat'l Bank, maturity date 1973, interest rate various-----	2, 327, 500
(3) Eurodollar Credit and Agreement, maturity date 1973, interest rate-----	50, 000, 000
(4) First Nat'l Bank of Akron Ohio, maturity date 1971, interest rate 4½ percent-----	130, 000
(5) First Nat'l City Bank N.Y., maturity date 1970, interest rate 4½ percent----	30, 400, 000
(6) First Nat'l City Bank N.Y., maturity date 1971, interest rate various-----	300, 000, 000
(7) Nat'l Shawmut Bank, Boston, maturity date 1974, interest rate various-----	2, 120, 000
(8) Pennsylvania Company, maturity date 1974, interest rate 9¼ percent-----	49, 000, 000

Total-----	434, 049, 722
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Short-term notes:

(1) Commercial paper-----	82, 530, 000
(2) 27 various banks-----	58, 072, 667

Total short-term notes-----	140, 602, 667
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Funded debt matured:

Various issues—total-----	323, 005
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Total debt in default-----	1, 103, 336, 819
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B. Funded debt unmatured:

Mortgage bonds:

(1) Boston and Albany R.R. Co. improvement 4½ due 1978, Trustee—New England Merchants and Bank and Trust Co. Boston, coupon (\$1,000) and registered (\$1,000, \$5,000, and \$10,000). Listed: Boston Exchange----	5, 041, 000
(2) Boston and Providence R.R. Mortgage 4½, due 1978-----	1, 650, 000
(3) Lake Shore and Michigan Southern R.R. 3½, due 1997, Trustee—Irving Trust, coupon (\$1,000) and registered (\$1,000 and multiples)-----	43, 357, 000
(4) Mohawk and Malone Ry, 4, due 1991, Trustee—Irving Trust, coupon (\$1,000), registered as to principal. Listed: New York and London Exchanges-----	1, 489, 000
(5) N.Y.C. R.R. Cons. 4, due 1998, Trustee—Bankers Trust, coupon (\$1,000) and registered (\$1,000, \$5,000, \$10,000, \$50,000). Listed: New York Stock Exchange-----	62, 885, 000

PENN. CENTRAL TRANSPORTATION CO., LONG-TERM DEBT, DEC. 31, 1972—Continued

III. Schedule of long-term debt—Continued

B. Funded debt unmatured—Continued

Mortgage Bonds—Continued

(6) N.Y.C. and H.R. R.R. Lake Shore 3½, due 1998, Trustee—Morgan Guaranty, coupon (\$1,000) and registered (\$1,000, \$5,000, \$10,000, \$50,000). Listed: New York and London Exchanges	\$15, 505, 000
(7) N.Y.C. & H.R. R.R. Mich. Cent. 3½, due 1998, Trustee—Morgan Guaranty, coupon (\$1,000) and registered (\$1,000, \$5,000, \$10,000, \$50,000). Listed: New York and London Exchanges	17, 101, 000
(8) Sturgis Goshen & St. Louis R.R. 1st 3½, due 1989, Trustee—Manufacturers Hanover, coupon (\$1,000), not listed	4, 000
Total mortgage bonds	147, 032, 000

Collateral trust bonds:

(1) N.Y.C. R.R. collateral Trust 6, due 1990, balance \$7,799,900 (portion in default \$800,000). Trustee—Irving Trust, coupon (\$100, \$500, \$1,000) and registered (\$1,000). Listed New York Stock Exchange	6, 999, 900
(2) Penn Central collateral trust 6½ due 1993, balance \$7,641,800 (portion in default \$728,000). Trustee—Irving Trust, coupon (\$100, \$500, \$1,000) and registered \$1,000, listed New York Stock Exchange	6, 913, 800
Total collateral trust bonds	13, 913, 700

Miscellaneous obligations:

Various issues—total	2, 227, 017
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Total funded debt unmatured	163, 172, 717
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C. Equipment obligations:

Equipment trust certificates:

26 various issues maturing:	
Within 1 year	8, 343, 960
After 1 year	55, 019, 920
Subtotal	63, 363, 880

Conditional sales agreements:

57 various issues maturing:	
Within 1 year	48, 066, 203
After 1 year	275, 419, 229
Subtotal	323, 485, 432

Total equipment obligations	386, 849, 312
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D. Receivers and trustee securities:

Penn Central transportation guaranteed certificates guaranteed by DOT pursuant to "Emergency Rail Service Act of 1970":

(1) 6½ percent due 1976	50, 000, 000
(2) 7.05 percent due 1986	50, 000, 000

Total receivers and trustee securities	100, 000, 000
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PENN CENTRAL TRANSPORTATION CO., LONG-TERM DEBT, DEC. 31, 1972—Continued

III. Schedule of long-term debt—Continued

E. Amount payable to affiliates:

(1) American Contract Co.....	\$17,315,000
(2) Beech Creek R.R. Co.....	3,297,224
(3) Chgo., Kal. & Sag. Ry. Co.....	532,045
(4) Chgo., Harrisburg Coal Co.....	175,000
(5) Clearfield, Bitum Coal Co.....	5,129,098
(6) Cleveland & Pgh. R.R.....	6,659,944
(7) Cleveland, Cinn., Chgo. & St. Louis R.R.....	4,727,929
(8) Delaware R.R.....	984,568
(9) Dispatch Shops.....	2,676,318
(10) Excelsior Truck Leasing Co.....	150,000
(11) Indianapolis Union Ry. Co.....	50,000
(12) Little Miami R.R. Co.....	4,158,906
(13) Merchants Despatch Trans. Co.....	1,350,000
(14) Michigan Central R.R.....	40,059,624
(15) New York & Harlem R.R.....	1,798,835
(16) New York Connecting R.R.....	2,160,210
(17) Northern Central R.R.....	18,455,516
(18) Pgh & Lake Erie R.R.....	12,799,982
(19) Pennndel Co.....	13,619,495
(20) Pgh., Ft. Wayne & Chgo Ry.....	27,115,563
(21) Providence Produce Whse.....	389,530
(22) St. Lawrence & Adirondack.....	614,170
(23) Terminal Realty Penn Co.....	214,506
(24) West Jersey & Seashore R.R. Co.....	364,262

Total amount payable to affiliates..... 164,797,725

Grand total long-term debt..... 1,918,156,573

READING CO., LONG-TERM DEBT, DEC. 31, 1972

I. DEBT TO DEBT PLUS EQUITY RATIO

	Amount	Percent
Debt:		
Long-term debt due within 1 year.....	\$2,150,867	
Long-term debt due after 1 year.....	92,604,713	
Total.....	94,755,580	39.6
Equity:		
Common stock.....	69,989,100	
Preferred stock.....	69,961,750	
Capital surplus.....	793,943	
Retained income.....	3,757,560	
Total equity.....	144,502,353	60.4
Total debt plus equity.....	239,257,933	100.0

II. SUMMARY OF LONG-TERM DEBT¹

	Total outstanding	Due within 1 year	Due after 1 year
Funded debt unmatured.....	\$53,403	\$20,000	\$33,403
Equipment obligations.....	11,588,108	2,130,867	9,457,241
Debt in default.....	82,070,000		82,070,000
Amount payable to affiliate.....	1,044,069		1,044,069
Total.....	94,755,580	2,150,867	92,604,713

¹ Details on following pages.

READING CO., LONG-TERM DEBT, DEC. 31, 1972—Continued

III. Schedule of long-term debt:

A. Debt in default:

Mortgage bond:

Reading Co. first and refunding 3½ Series D, due 1995. Trustee—Manufacturers Hanover Trust Co. Both coupon (\$1,000) and registered (\$1,000, \$10,000 and authorized multiples of \$1,000) listed on the New York and Philadelphia-Baltimore-Washing Stock Exchanges	\$54,070,000
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Obligation held by U.S. Government resulting from part V loan default:	
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Reading Co. collateral trust notes, due 1969-78	28,000,000
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Total debt in default	82,070,000
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B. Funded debt unmatured:

Miscellaneous obligations—Cornwall R.R. due Nov. 1, 1974	53,403
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C. Equipment obligations:

Conditional or deferred payment contracts (various):	
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Due within 1 year	2,130,867
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Due after 1 year	9,457,241
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Total equipment obligations	11,588,108
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D. Amount payable to affiliate:

Eastern Real Estate	2
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Ironton Railroad Company	65,739
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Port Reading Railroad Co.	774,149
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Port Reading Railroad Co. property taxes	204,179
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Total payable to affiliates	1,044,069
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Total long-term debt	94,755,580
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Mr. ADAMS. Any other questions, Mr. Skubitz?

Mr. SKUBITZ. No.

Mr. ADAMS. Mr. Shoup, do you have any other questions?

Mr. SHOUP. No. Thank you, Mr. Chairman.

Mr. SKUBITZ. Mr. Chairman, I have no questions, but I would like to make one statement, if I may, at this moment.

As we begin these hearings, Mr. Chairman, I am trying to lay down certain precepts that are going to be my guide in trying to determine my ultimate actions. My first point is that I believe under the free enterprise system, of course, anybody has got the right to succeed, and everybody has the right to fail, so I don't think we owe any great obligation to the creditors or the stockholders. I don't want to hear sob stories from either.

I do think the Congress has an obligation to the public to maintain an adequate transportation system. I think our guide here must be what railroads are absolutely necessary to maintain and on what basis. What might be necessary, what is desirable, and what is simply obsolete.

I do not yet understand that the Government has any obligation to take over lines that are obsolete, or even those that are desirable. I think we have got to maintain the main arteries. That brings me down to the line of questions that Mr. Adams made.

I wonder whether the Government should take over the entire line or system, or whether it is necessary only to take over just the principal artery? Should we not look further down the road on taking over all of the main arteries on a lease-back basis from each of the main railroad companies. Some of them appear to be under the impression that they should maintain the track only to the bare minimum of what is necessary. If we are going to get into the business of maintaining the type of roadbed that is necessary for Amtrak, perhaps our approach must be different.

I have the feeling that the manner in which the Postal Corporation is now operating, Mr. Chairman, we may eventually have to go back to using rails. We would then need to maintain the tracks in such a way that we can get the mail across the country at least for all classes except first class or air mail.

From a safety standpoint it will be necessary to have some control over the main rail arteries. I would much sooner that perhaps the railroad should maintain principal rail arteries on a lease-back basis under Government oversight. Perhaps during some future recession period people can be put to work on a job doing useful work in maintaining roadbed rather than the type we have done in the past.

I would during the course of these hearings welcome comments and suggestions on these points. I would appreciate them.

Mr. ADAMS. Mr. Shoup.

Mr. SHOUP. Yes, I would, too, Mr. Chairman.

Just general questions, Mr. Chairman. Some time I hope that you will look into this.

No. 1, you are speaking of something which I agree very much with is the total concept of intermodal transportation. I am wondering though if you fully are considering the problem of the operating real estate as opposed to the rolling stock. In fact, that we have some which is public and another that is private. Is this not quite a problem that is almost insurmountable, until we can resolve it?

Do you follow my line of reasoning when we speak of the highways, we are talking of public real estate—a right of way, in other words—whereas we are now speaking of private right of way, profitmaking on this particular piece of real estate. Does this not present a problem?

Mr. BROOKS. We have an ongoing system. We have grown up with the highways and the waterways paid for with public funds, while the railways have been under private hands. Now we are deviating somewhat from the ongoing system, and I think we have to be careful in doing that.

Mr. SHOUP. Thank you.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. DIXON. You had something.

Mr. DIXON. I don't have any questions, Mr. Adams, but I want to let Chairman Stafford know of a meeting I had the other day with Mr. Chandler and Mr. Kahn. We went in to see Chairman Staggers, and without any vote by the 11 members of the Commission we agreed that the ICC is an independent agency, it is an arm of Congress, and that in the area of surface transportation the ICC would work with us on the substance of legislation and also provide technical assistance to the committee.

Is that agreeable?

Mr. CHANDLER. Be happy to do that.

Mr. STAFFORD. We have always considered ourselves an arm of the Congress.

Mr. ADAMS. Thank you, Mr. Chandler and Mr. Stafford.

The subcommittee is adjourned until tomorrow at 10 o'clock.

[Mr. Adams' prepared statement follows:]

STATEMENT OF HON. BROCK ADAMS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WASHINGTON

Mr. ADAMS. Mr. Chairman, these hearings begin almost 3 years after the Penn Central went bankrupt. This major rail carrier in the East, one of the largest in the world, has remained in limbo while a traditional reorganization was attempted within the private sector. The Congress has only acted in emergencies, responding to crises as they appeared.

The bankruptcy of the Penn Central has been accompanied by that of the other and smaller roads in the Esat, the Lehigh Valley, the Reading, the CNJ, the Erie Lackawanna, and the Boston and Maine. For almost 3 years I have seen this crisis deepen, and now the Congress must immediately deal with the threatened collapse of basic rail transportation in the East.

The attention Congress has been forced to give to the fate of the rail system in the East demonstrates the importance of this transportation system to the region and to the Nation. We have passed strike moratoriums, we have guaranteed loans, we have directed studies—all to keep this system going by hook or by crook, with paper clips or chewing gum. One thing has been clearly understood: if rail transportation stops in the East, the economy stops—plants begin to shut, lights begin to dim, stores begin to empty of food. Men and women are put out of work.

So far the Congress has refused to let this rail service be stopped either by labor strike or financial bankruptcy. In the past 3 years there has been the dominant hope that these patchwork solutions would bring an end to the chronic railroad crisis; that Band-Aids would heal the wound; and that free enterprise and the private sector with limited governmental aid would bring the Eastern railroads back to health.

These last 3 years have shown that this hope was wrong and that we have only postponed the evil day. We are now faced with the very real possibility that operations on the bankrupt lines will cease and that these lines will be liquidated by court order.

I do not think the economy of the East could survive the transportation chaos which would follow a series of liquidations. It would take time for the fragments of the bankrupt railroads to be picked up and sorted out by the still-solvent railroads who might wish to buy them. This time—months or perhaps years—without assured service would do irreparable harm to the shipper, the manufacturer, and the communities who depend on rail service. Yet it is exactly this transportation disaster which we now face.

Like it or not, the solution to the railroad crisis in the East is again before the Congress, and this will be the last time. The parties involved—labor, management, shippers, rail creditors, State and local governments—are now turning to Congress for action and for a decision.

There is one hope to be taken from the seriousness of the situation. It has made all concerned face the fact that basic measures must be taken to preserve and continue basic rail service in the East. Nearly all parties are agreed that the rail system in the East is overbuilt, has too much track to serve present needs and must be changed from a 19th century rail monopoly into a transportation service of the 20th century, ready to meet the needs of the 21st. So we are ready to discard the status quo and to look at fundamentals. We must be ready to look at rail transportation not as a tangle of private corporations each struggling, and failing to survive, but as a network of essential transportation. We must be willing to look at the problem as one of regional transportation needs not as that of the survival of a particular corporation.

From this final crisis we can shape a sensible solution which will assure a basic rail transportation service in the East for years to come. Or we can do nothing and let the Devil take the hindmost. I do not think we can do nothing, but I hope we will not be driven to hasty or impractical solutions. At this point there have been outlined solutions at two opposite poles—a free market free enterprise solution, with the chaos that would entail and at the other extreme, nationalization, with all its cost and inefficiency. I do not favor either extreme. I hope and believe that a way can be found that goes between these two extremes—a way that will use private resources to the greatest extent possible and government aid only where necessary.

The purpose of these hearings is to develop a solution to the present railroad crisis in the East and prevent a future crisis in the Midwest and Far West. There are certain common points of agreement on the goal: railroads in the East must first be reduced in size and adapted to the economic needs of the region. Then we must look at the overall transportation system so this committee can decide how to best achieve this end. Beginning this week we will hear the suggestions of the ICC, and tomorrow of the DOT. These ideas will be followed by many others. They are two basic issues to be decided, and I hope my colleagues will have these in mind in reviewing the many detailed proposals we will receive. They are:

(1) How much Federal aid is needed and what form this aid should take; and

(2) What process, which allows a fair hearing to all should be created to determine what essential rail service will be continued.

The decision will be on what essential rail service is needed and will be continued in the East. It is of critical importance that we establish a fair method of deciding on that service—one that will consider public convenience and necessity as well as simple economics—and also that we establish what Federal commitment will be needed to maintain that essential rail service. These are the basic questions and the questions the Congress must decide.

[Whereupon, at 12:10 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, April 17, 1973.]



NORTHEAST RAIL TRANSPORTATION

TUESDAY, APRIL 17, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Brock Adams, presiding [Hon. John Jarman, chairman].

Mr. ADAMS. The subcommittee will come to order.

This is a continuation of the hearings which started yesterday morning on the railroad system of the United States, the Northeast quadrant in particular.

It is our pleasure to welcome this morning to the subcommittee the Secretary of Transportation, Mr. Claude S. Brinegar.

Mr. Brinegar, we look forward to your testimony. If you wish to summarize and place your statement in the record, the committee will be happy to do that. If you prefer to proceed with it, the committee will receive it in whatever fashion you wish to present it.

Will you please, for the record, introduce your associates so that the record will reflect it, if other individuals make some remarks during the course of the hearing?

STATEMENT OF HON. CLAUDE S. BRINEGAR, SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY JOHN BARNUM, GENERAL COUNSEL; JOHN W. INGRAM, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; AND ASAPH HALL, SPECIAL ASSISTANT TO THE SECRETARY

Secretary BRINEGAR. Thank you, Mr. Chairman.

With me today is John Barnum, General Counsel of the Department of Transportation; Mr. John W. Ingram, Administrator of the Federal Railroad Administration; and on my far right is Mr. Asaph Hall, my Special Assistant.

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you today.

On March 26, in response to Senate Joint Resolution 59-2, the Department of Transportation submitted to Congress a report on the Northeastern railroad problem. Today I will review this report's recommendations and also comment on some related proposals and problems before the committee.

It is well known that the Northeastern railroad situation has been developing over a long period of time. We believe that the

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magnitude of the problem and the urgency for action are attributable in large part to past failures to face up to the many difficult questions involved. In our report, we endeavored to focus on the key elements of the problem and to make recommendations for action that would lead to a viable, long-term solution.

We do not claim that our report provides all the answers, or that each detail in our list of recommendations is exact. What we are trying to do is to lay out a procedure for action, rather than a precise cook-book type formula. We are convinced that no one is capable of prescribing such cook-book details at this point. Such details, plus the responsibilities of the affected parties, cannot really be pinned down until the necessary early steps have been taken. Our recommendations are aimed at getting these early steps underway—and underway promptly enough to give the judges and the trustees sufficient confidence in the direction of progress so that they can postpone the threatened shutdown and liquidation.

An essential objective is to find a solution that is within the broad framework of the private sector. However, let me stress that this does not mean a hands-off attitude on the part of the Federal Government. What it means is that all affected parties—including the Federal Government—must work together to find the way out, with the abilities and resources of the private sector used to the maximum. We believe this approach properly protects the essential public interest, the private sector rail transportation system and the Nation's taxpayers.

Before describing the broad outline of our proposal, I think it would be appropriate to briefly review the major conclusions of our report. Our eight key conclusions were as follows:

1. The Nation's private enterprise rail system, while suffering under many long-term burdens, is neither dead nor dying. Despite serious problems in the Northeast, many healthy rail companies are doing well and showing signs of further gains.

2. Rail nationalization is unnecessary and would solve little, except perhaps hide some of the short-term Northeast area problems under the bed of the Federal budget. Experiences elsewhere indicate that nationalization only means increasing subsidies and declining resource efficiency—something our Nation can ill afford. The largely state-owned rail systems of Japan, Britain, Germany, France and Italy now report losses that in total exceed \$2 billion per year. Nor do we believe that partial or piecemeal nationalization, such as buying only the roadbeds of the bankrupt or ill carriers, is proper. It is awfully hard for the Federal Government to become a "limited partner" in a private enterprise operation, for one thing almost inevitably leads to another. Likewise, such piecemeal nationalization would weaken—and perhaps destroy—the vigor of the private enterprise companies that would be forced to compete with this federally backed operation.

3. Without question, we face a short-term rail crisis in the Northeast. Six of the class I rail carriers in this area are in bankruptcy, and the major one—the Penn Central—is on the verge of court-ordered liquidation in order to prevent further erosion of the creditor's estates.

Correcting this short term problem would require cooperative and public-spirited action by all parties involved—Congress, the administration, the States, regulators, labor, creditors, shippers and the courts.

4. If there were a complete and abrupt Penn Central shutdown, the Northeastern area would, in the short term, feel the impact quite significantly. However, given the ability to make necessary adjustments to equipment and routes, other rail carriers and trucks would, in time, willingly step in and pick up most of the slack. The Penn Central Co., per se, is not essential, though much of the rail service provided over its mainline tracks is.

5. While the Northeast has lost some of its rail freight business in recent years, the overall freight total remains quite large. Certainly it is large enough to support one or more new private sector rail systems that could be developed from the various systems owned by the six bankrupt carriers. It should also be possible, and it certainly is desirable, to continue rail competition in high-density markets. Our studies suggest that, if permitted to emerge unencumbered from the tangled web that now embraces the Northeast carriers, a new entity or entities would generate sufficient profits and be able to raise sufficient cash to finance operations and expansion.

6. The streamlining process will lead to a reduction in rail employees and to some community and shipper problems. We recognize that plans concerning adequate job protection or compensation to the affected employees will need to be developed. These plans will require consultations with management and employee representatives as well as with the trustees and creditors of the bankrupt estates. Likewise, special studies will be needed to determine the extent of the problems of communities and shippers and how best to handle this period of transition.

7. The emergence of a healthy, streamlined rail system as a new ongoing company would significantly add to the value of the total estates of the six bankrupt carriers. This added value, plus the proceeds from prompt liquidation of the remaining pieces, including sales of assets to other railroads, should provide a sufficient total to permit the various claimants to work out equitable divisions of the values. Such incentives as special tax allowances and short term suspensions of certain time consuming procedures should encourage the parties to resolve their differences in a reasonable time period. We believe that our plan provides for those incentives—that it helps to create the machinery and oils the gears.

8. Looking beyond the immediate problems of the Northeast, it is clear that significant changes are needed in the regulatory framework if rail systems throughout the Nation are to avoid the problems of the Northeast and to become the really effective private sector competitors they are capable of being. Our report contains several specific recommendations for these needed regulatory changes.

Turning now to the streamlining procedure, the basic steps that we recommend are as follows:

First, it is necessary to identify the core rail service that it is proper to preserve in the Northeast, based on the concept of long term economic efficiency in the use of transportation resources. The major factors to take into account are the amount of rail service that is presently being used or expected to be used; whether rail service is more economically efficient than available transportation alternatives; the need for achieving rail service that is economically self-sustaining; and the need to preserve competition between railroads in markets with heavy rail traffic.

We propose that the Secretary of Transportation be empowered to identify this core service, with provisions for the input of views by all interested parties. We believe that 90 days is adequate time for this step.

Second, it is necessary to establish a procedure to enable the bankrupt railroads of the Northeast to cut through the problems caused by current procedures applicable to the restructuring of bankrupt railroads and establish or reshape operating entities capable of providing the designated core service. We propose the establishment of a new private corporation, whose board of incorporators would be appointed by the President. This Board would select assets from the bankrupt carriers that are needed to provide, as a minimum, the core rail service, plus such other services as they find economically justifiable. Bankrupt railroads would be permitted to terminate rail service not included in the core system within a specific time period and without ICC approval. However, to prevent immediate disruptions, shippers, communities, and others would be afforded the opportunity to provide for the continuation of service not included in the core by agreeing to compensate the carriers for the losses incurred in continuing the service.

The Board would then proceed to design in specific detail one or more rail systems in the Northeast based on the Secretary's core. In designing the system the Board would apply two criteria: economic viability of each element of the system, or systems, and preservation of rail service competition in high density markets. After the Secretary approves the Board's proposals as to meeting overall criteria, the Board would acquire the facilities and equipment of the bankrupt roads under contracts with the estates approved by the bankruptcy courts. Payment for the assets acquired would be with stock issued by the corporation.

We believe the selected assets of the bankrupts, as a going-concern value, would exceed their uncertain value under protracted and piecemeal liquidation. Consequently, we believe that the trustees of the bankrupt railroads would find it in their best interests to work out equitable agreements with the Board in the specified time periods, and that the courts would agree with the settlements. If the Board designates more than one new system, the Board would establish as many additional corporations as are required to run the systems. Alternatively—and subject to guidelines on competitive balance and negotiations with other carriers—the systems could become part of existing rail companies. To encourage immediate efficiency and help generate extra cash during the critical early years, the new corporation or corporations would be able to use the tax losses of the bankrupt railroads.

At the same time the Board is negotiating with the bankruptcy trustees, the Board would also negotiate with the labor unions and prospective lenders of the capital the new corporation will require to streamline and upgrade the system. The acquisition of assets from bankrupts, the arrangements with labor, and the new financing are closely related—you can't have a viable new system without all three. Each is contingent upon the other two, so they must be negotiated concurrently and closed simultaneously.

Third, it is necessary to establish procedures to insure that the transition from today's overbuilt, financially troubled system to the

streamlined system is reasonably smooth and that it treats investors, employees, competitors, and shippers as equitably as possible. This is obviously a complex task. Certainly our plan, or for that matter any other plan, will not work without the cooperation of the various major interest groups. We envision the new corporation as the key vehicle and the board of incorporators as the catalyst to bring together these interest groups at the point where decisions can be made and issues resolved in a timely manner.

With respect to the protected employees of bankrupt railroads who are not hired by the proposed new corporation, some form of appropriate compensation will have to be found. The possibilities include incentives for early retirement and cash settlements from the receipts of early liquidation of assets of the bankrupt estates or from advanced borrowing against the liquidation. Also, cash for such settlements might be obtained by means of a loan secured by the stock of the new corporation. These lump sum payments may be eligible for tax treatment that recognizes the special nature of the payments.

A key issue for the bankrupt carriers and their creditors is whether they should delay attempts to liquidate or continue to permit cash losses pending the takeover of rail service by the proposed new operating entities. We believe that a realistic appraisal of the options will show that implementation of our plan will increase the present value of the bankrupt estates and this will give these parties adequate reasons to dealy requests for immediate liquidation.

Another key issue is the problem of financing startup costs and providing initial working capital for the new entity or entities which will operate the restructured system. At this point we will simply note that our investigation convinces us that such financing can be obtained from the private capital market, provided the proper incentives exist.

Consideration must also be given to the impact that the loss of service or higher rates will have on some shippers. While we believe that relatively few shippers will be severely affected by the proposed streamlining of the rail system, it is most important that communities and shippers be given sufficient leadtime to make plans for obtaining alternate means of transportation or new markets, or to find means to insure the continuation of rail service by subsidizing its deficits. We are looking at ways to help minimize these disruptions and will be working closely with shippers and communities as details of the streamlined system are developed.

Fourth, it is necessary to revise outmoded and overly restrictive regulatory procedures that are applicable to railroads. This step of our plan should help insure that railroads in all sectors of the country, including the streamlined system in the Northeast which evolves from our plan, avoid the experiences of the bankrupt railroads. Some of the proposals are the same or similar to proposals the administration submitted to the 92d Congress. They include:

- A. Liberalizing abandonment procedures.
- B. Instituting greater flexibility in ratemaking and requiring all below-cost rates to be raised to the variable cost level.
- C. Eliminating the subsidization of Government traffic at the expense of others.
- D. Modifying certain practices of the rate bureaus.

E. Providing measures to facilitate rail merger decisions, the joint use of rail facilities, and intermodal ownership.

F. Encouraging rapid entry of motor and water services to fill gaps created by liberalized rail abandonments.

G. Eliminating discriminatory State and local taxation of rail assets.

H. Eliminating delays in State approval of intrastate rates that coordinate with changes in interstate rates.

We also propose to amend section 77 of the Bankruptcy Act to give courts adequate authority to act promptly and rationally to solve railroad bankruptcies.

Before deciding upon the plan proposed in the report, we studied other approaches to solving the rail problem in the Northeast. The alternatives ranged from a hands-off approach to that of either partial or complete nationalization of the bankrupt carriers. Each was discarded because of serious drawbacks. In some cases, the alternatives simply were inadequate to the task in terms of time and substance. Others would have provided temporary relief, but failed to face up to the real problems and could have been grossly unfair to the Nation's taxpayers.

It is clear that to allow events to run their course under the current procedure prescribed by section 77 of the Bankruptcy Act could well result in a major disruption of railroad operations, including those parts of the system which are essential to the economy of the region and the Nation. Such a disruption could be most harmful to parties such as labor and creditors.

Another alternative would be to strengthen the procedure under section 77 of the Bankruptcy Act, vest more powers in the reorganization courts, provide emergency Federal financial assistance to the trustees in bankruptcy, and look to an eventual solution through the enactment of broad regulatory reforms. A major difficulty with this approach is that it does not correct the multiplicity of services of the railroad system in the Northeast. While the approach might help delay the cessation of railroad operations, by continuing operations of the various bankrupt entities, it would also postpone finding a long-term solution to the problem.

Still another approach would be to provide for one of a number of schemes involving Federal acquisition or control. These included the establishment of a quasi-governmental corporation to operate the railroads; Federal acquisition of the rail rights-of-way; the assumption of direct control of the railroads for a limited period of time for the purpose of "reordering" operations; and outright Federal ownership and operation of the railroads. In varying degrees, all of these alternatives would impose upon the Nation's taxpayers the unfair financial burden of acquiring the necessary interests in the railroads and operating and maintaining the system. Also, we doubt most seriously that Federal control would result in better management or lower costs than those which could be expected if the railroads were operated under private ownership unburdened by today's restraints.

Now I would like to turn to three major bills currently before the Committees which deal with issues raised in our report.

H.R. 4897, the proposed Essential Rail Services Act, would have a Government created corporation acquire the rail rights-of-way of bankrupt railroads in the Northeast and rehabilitate and maintain

the roadbed through the use of Federal funds and a user tax. We oppose the bill on several grounds. First, the abandonment procedures in the bill do not allow for rapid enough rationalization of the existing track system, and would continue the lengthy ICC investigations of proposed reductions in the Northeast. Such an approach, of course, fails to recognize the changes the economy of the region has undergone in the past few decades which have contributed so heavily to the downfall of the bankrupt railroads.

The overcapacity of the track system and multiplicity of services are major obstacles to establishing a viable rail system for the region tuned to today's needs and circumstances. Rather than simply pushing Federal money into an outdated system, we believe the system must be rationalized and restructured. If this is done, we believe that private capital can supply the financing needed for the operation and improvement of a restructured system. We believe that the principal Federal roles should be to set this rationalization in motion and to pursue enlightened regulatory policies to enable all railroads to keep pace with the times.

In this connection, I would like to comment briefly on H.R. 5385, the proposed Surface Transportation Act. We are pleased to see that the bill contains a number of provisions aimed at bringing about badly needed regulatory changes. While we may have some differences with the regulatory provisions of H.R. 5385, we can say that we also have considerable areas of agreement. However, we would prefer to complete our legislative proposals before providing specific comments on this bill. As for the financial assistance provisions on H.R. 5385, we have serious reservations at this time. First, we doubt that the proposed program of massive Federal financial assistance for the improvement of rail plant is really the proper approach to this problem. We would recommend a go-slow approach at this point, until we better understand the gains from rationalization and regulatory reform. Also, we need to better understand who really needs financial help.

With respect to the issue of the availability of rolling stock, we are not convinced that the shortage of freight cars is necessarily due to the size of the rail car fleet. Rather, the issue of car supply is a function of both the size of the fleet and utilization of the fleet. Feeding more cars into the system could result in only additional congestion, such as now being experienced in the export movement of grain. There is good evidence that inefficiencies in the system of distributing, scheduling, routing, loading and unloading cars are a much more significant factor affecting the availability of cars to shippers. Improving utilization will in the long term make cars more available, and increase the return on investment for the owning carriers. It will also tend to reduce the useful life of the average car and require earlier replacement. It is at that point that I believe we would have to review to what extent utilization has indeed been improved, and whether private financing is available to support car purchase programs. I suspect it will be.

Finally, I would like to discuss briefly H.R. 6591, the bill submitted by the ICC. Let me say at the start that we welcome their suggestions and we look upon them as partners in our efforts to solve this problem. We believe there is merit in many of the ICC proposals, especially those having to do with abandonments. However, we believe their bill does have several serious shortcomings.

The ICC bill contains undesirable measures providing for Federal involvement in the solution of the problems of the railroads. One is a Federal assistance program for the improvement of rail plant. I have already expressed our views in opposition to such a proposal. Another calls for the leasing by the Government on a temporary basis of the lines of bankrupt railroads pending the restructuring of rail service of such railroads. We do not believe that this step is necessary. Also, once the leases are made, the incentive to restructure will diminish and there will be strong pressures to extend the leases on and on. We also oppose the proposal in the ICC bill for Federal payments to States to help finance State programs to continue service on rail lines that otherwise would be abandoned. While we favor State subsidy programs of this nature—provided that they are financed at the State and local level on the basis of State and local decisionmaking—we believe that Federal financial involvement in such programs would only work to lock-in rail inefficiencies. Finally, we oppose the idea of a national public carrier waybill tax to finance the ICC's proposed restructuring in the Northeast. We believe the tax has serious inequities and, in any event, is unnecessary.

Mr. Chairman, we regret that we do not have for your consideration today draft legislation to implement the plan that we have outlined. We are working very hard on the preparation of this legislation and, at the same time, developing additional details of the plan. We are well aware of the midsummer deadlines facing the Penn Central trustees. We will submit our proposed legislation to you at the earliest possible moment. After this submission we would be happy to come before you again and discuss the specific details.

Next, let me discuss briefly some of the comments—both pro and con—that have been made since we submitted our proposal on March 26

First, let's look at the cons.

Most of them can be broadly characterized by phrases that imply that we are putting private profit ahead of public service, or that we haven't really come to grips with the issue, or, more simply, as someone was quoted as saying, "no dough—no go."

I suspect that this last phrase—"no dough, no go"—neatly gets to the heart of the objections. Since we haven't proposed that the Nation's taxpayers lay out a billion or so to bail out the Northeast, we are promptly accused of callously adopting a public be damned attitude. I submit that our approach is the opposite of public be damned.

To assume that the only way to solve the Northeast problem is to appropriate massive amounts of Federal money is, to me, to adopt a taxpayer be damned attitude. We think there's a better way—and that's to use the maximum capabilities of the private sector. While safeguards are required and can be provided, we cannot escape the fact that the private sector is the Nation's prime mover. But, of course, it must be permitted to move.

Some of the controversy about our proposal may have arisen because of the difficulty of sorting out the key issues in the rail problem—the impact on labor, the impact on communities, the willingness of the financial community to finance future rail operations, and the extent of Federal financial involvement. We have tried to say that no one really knows enough at this time to lay out specific pro-

grams or dollar commitments. We have approached these uncertainties by outlining a procedure: (1) For developing the needed information, (2) for moving forward on the streamlining process, and (3) for providing adequate reasons for the judges and trustees to defer action on near-term liquidation. We think that these are the urgent and proper first steps.

Perhaps I can illustrate the value and need for moving cautiously by briefly citing some data on the labor situation.

Employment of the six bankrupts totaled 116,000 at the end of 1971. By the end of 1972 it had dropped to 108,000—a 7-percent decline in 1 year. It seems reasonable to expect such attrition to continue, thus pointing to a total of about 95,000 by late 1974, the earliest date at which significant streamlining in the system seems likely. Since the streamlining procedure would require several months to complete, attrition should further reduce the total, perhaps by 5,000 to 10,000, during the transition period. In addition, about 15,000 of the work force now exceed age 60—the railroad unions' newly bargained optional normal retirement age. With adequate additional incentive, most of these 15,000 could be encouraged to accept early retirement.

Another group of railroad employees are those in their twenties, with less than 3 years of service. Based on outback experiences in other railroads it seems likely that this group, which may approximate 15,000, could be terminated and provided with reasonable severance pay. A further possibility to handle displaced labor is an agreement that other railroads will give them first-offer rights before new hiring. Also, of course, extra labor will be needed in the early years to handle the catchup maintenance and capital programs.

As indicated previously, it's not possible to spell out the details of the labor issue—or all the solutions, for that matter—until the streamlining procedure is well along. However, the possibilities outlined above—attrition, retirements, separation of young, short-service employees, offset by the need for maintenance workers—could handle 40 percent or so of the current work force. Whether this is too few or too many no one can tell. But it does suggest that, with careful handling, the labor issue is manageable. Some moves and some retraining will be needed, but that's common experience in industries undergoing periods of transition.

A final comment on the labor issue is in order. We are not proposing that anyone shove a solution down labor's throat. Labor is obviously a key party to the final solution, just as are the trustees, creditors, the financial community, State and local officials, and others. Without labor's agreement and cooperation nothing will happen. However, we're convinced that when labor contrasts what we are proposing with the likely alternative of protracted and piecemeal liquidation, it will willingly cooperate to make our approach workable and effective.

Finally, let me mention that, along with the arrows, there has been some encouraging response to our proposal. Much of it is admittedly a bit cautious, yet many of those who are well-informed on the rail situation have offered words of encouragement. To balance the public record a bit, I'd like to close by offering for the record some of these comments, including several recent letters and telegrams addressed to the chairman and to me from shippers, investors, and railroad management.

I have with me, Mr. Chairman, a package of these. I will file them for the record, if I may. I would like to briefly refer to two or three.¹

Mr. ADAMS. Without objection, those will be made part of the committee's file.

Pleased proceed.

Secretary BRINEGAR. I first refer to a letter addressed to Mr. Jarman, with copy to me from Robert Rubin, managing director of Lehman Bros. I will read two paragraphs:

It is our feeling that the private sector of our economy can provide financial support for an entity or entities which would own and operate a viable rail system in the Northeast. Naturally, the issue of viability of such a system cannot be taken lightly, given the recent history of the number of bankrupted carriers in the area. However, providing a solution to the principal areas of concern, although difficult, should not be insurmountable. Such a rail system could be put together in a private profit seeking corporation if the equity ownership initially in the hands of those corporations and unencumbered assets were part of the system. The initial ongoing cash needs of such an entity could then be financed by the private sector with the equity represented by initial assets providing a sound basis for borrowing in the private sector. Ultimately the value of the equity might be realized for initial owners from a combination of future dividends, stock redemptions or sale of stock to the general public.

I also have a letter from Irving Seaman, Jr., the chief executive officer of the National Boulevard Bank of Chicago, a man actively involved in national public finance.

He notes in part:

We believe that if legislation is directed toward rationalization of the railroad plans and the resulting labor problems, a viable Northeastern system could be developed which would rekindle investor confidence in railroads to the degree necessary to attract new investment from the private sector in railroads generally. In the Northeast such legislation could well encourage investors to make funds available for restructuring the railroad and improving its right-of-way.

I also have a letter from Mr. William E. Simon, the Deputy Secretary of the Treasury, until recently a partner in a major Wall Street firm. He writes to me in response to my inquiry:

If we are to have a private solution to the Northeast rail situation, a principal ingredient must be the complete participation by the financial community evidenced by their willingness to provide the funds for the interim operations, the longer-run working capital needs, and the restoration and upgrading of the physical plant.

Such participation is wholly consistent with the plan proposed by the Department of Transportation. Based on informal discussions which I have had with key members of the investment community and on my twenty years' experience on Wall Street, it is my opinion that private investment funds would be available to a new railroad corporation if it is restructured along the outlines of the DOT plan. However, I do not wish to give the impression that such financing will be easy, for it will be necessary to gain the confidence of the investing public, and that can only be accomplished by proving to them that such a railroad will be structured on economic criteria.

I also would like to note a telegram from Mr. Biaggini, president of the Southern Pacific Railroad. It says in part:

Have followed closely your proposals for solution of rail transportation problems in Northeast United States. Concepts you set forth have our support particularly since they will produce a rationalized rail system for the Northeastern area which can survive on an economic basis and one which will be brought about on a private enterprise approach.

¹ The letters, telegrams, and statements referred to may be found in the committee's files.

I have a telegram from John Reed, chairman of the Santa Fe:

We believe the Department of Transportation's report to Congress presents a constructive approach to the solution of the railroad problem in the Northeast. We heartily agree with the emphasis on private enterprise and the clear recognition of the need for rationalizing the over-built railroad plant in that territory in order to make a private enterprise solution possible. While many problems remain to be worked out, including the vexing problem of providing needed financial assistance, we think the Department's plan provides a framework on which an eventual solution can be based.

I also read in part a letter from Mr. Hays Watkins, president and chief executive officer of the Chesapeake System.

C&O/B&O and Chessie System, in general, has a very positive attitude toward your proposals. While, as I am certain you must understand as in all things, there would be some differences of approach in selected areas, nevertheless, overall, the philosophy embodied in the DOT proposal is certainly one to which this system of railroads can subscribe.

Likewise, just a brief reference to a letter from Mr. W. Graham Clayton, the president of the Southern Railway System.

I am writing to say that I fully endorse the basic private enterprise approach taken in your Report to Congress dated March 26, 1973, in response to Senate Joint Resolution 59-2. I think you have outlined the simplest and most practicable procedure for achieving a viable freight railroad system or systems in the Northeast under private enterprise ownership and operation.

Likewise, we have a number of letters from shippers and shipper groups that also give general support to the approach that we have brought before you. I will not read them at this point.

Mr. Chairman, that completes our prepared statement. I appreciate the chance to present it to you. At this point either I or my associates will do what we can to answer your questions.

Mr. ADAMS. Thank you, Mr. Secretary.

Following on with your having placed in the file and in the record certain comments from the financial community, that leads to my first question. I would like to place in the file, in the same fashion, the report from the New England Economic Research Office, Mr. Paul London, director,¹ in which they have surveyed the financial community. They report on the banks:

A consortium of 53 banks have been contacted. These same banks would have to play a major role in the private financing plan to rebuild Northeast railroads. They clearly are not interested without major Government guarantees.

On insurance companies the comment with regard to a major insurance company is:

A spokesman said in the private sector every proposed new investment must compete with other investment opportunities for funds available. He said, The DOT was overly sanguine, in speaking of availability of private capital for the railroads, and Government assistance in the short run to take care of long deferred maintenance, labor readjustment costs is unavoidable.

I also want to simply read into the record the report from the Treasury Department in the emergency rail services legislation which was passed by this committee. It is entitled, "Emergency Rail Services Legislation," hearings before the Committee on Interstate and Foreign Commerce on H.R. 18125, June 24, 25, 29, July 7, 8, 21, and December 15, 1970. This is the memorandum submitted by the Secre-

¹ Memorandum dated April 10, 1973, may be found in the committee's files.

tary of Transportation, then Secretary Volpe, with this comment from the Department of the Treasury regarding the present situation in dealing just with the Penn Central:

The Department of Treasury analysis indicates that absent some type of Government involvement the financial community will not provide the \$300 to \$400-million needed. In such case reorganization would take place.

Now, Mr. Brinegar, that brings me to my core and key question. It is not just a matter of the private corporation being established. I have talked with Mr. Claytor. I have talked in the past with the president of the Southern Pacific. I have talked with members of the consortium of the New York financial community. The opinion that they have is that the whole railroad financing of all viable or non-viable roads is very shaky at this point, and that nobody will take the common stock of a corporation which was created with its own assets; in other words, lifted by its own bootstraps.

But to do this it must mean that you have gone to the financial community with some kind of a plan. I want to ask you first, does the Department have a plan for this system, which you have presented to the financial community so that they could comment on it. I am talking about what it would look like, the rail lines as they would exist.

Secretary BRINEGAR. We have not set down pro forma income or asset statements.

Mr. ADAMS. I am talking first about the lines themselves, what the system would look like.

Secretary BRINEGAR. We have not. We have talked about it, by analogy, with other railroads, if the operating ratios were thus and so, if the system were of varying kinds of size, would in fact this system be financeable? In fact, there are many railroads in this country that are raising money and are considered good risks by the financial community. We have talked concepts. As I have tried to indicate, we are still at the stage of our investigation where we are trying to settle on the right approach rather than the specifics, because you can't get to the specifics until you have the approach.

Mr. ADAMS. When do you think, Mr. Secretary, that such a preliminary plan, showing the lines first, which I assume would be essential, and second, the proposed structure of this corporation, would be available to the committee, so that we could pass some kind of judgment on the viability of the system?

Secretary BRINEGAR. At this point it is hard for us to leap ahead and say what the Board of Incorporators would end up with because that requires a great deal of study of the network, the concepts of core services, the branch lines and other lines that might well be included. So, I think we would be a little ahead of ourselves to say this is the form of the new one or two railroads before the Board of Incorporators had in fact made the decisions as to what assets would be included.

Again, we have to back off a bit and look at the way many new businesses are started in the private sector. A man starting a business often has an idea and an objective, and a feeling that it will work. For him to draw his balance sheet on day one, or his income statement, and take it down to the financial community is just out of place. The community will say to him, "How do you really know?", as you are saying to me.

Mr. ADAMS. That is precisely it. You mentioned a letter from Mr. Claytor. I attended a meeting where Mr. Claytor spoke, and I have copies now of his speech. I think maybe he and I share somewhat the same position on your plan, which is that we agree we are starting with bankruptcy and we would like to end up with a privately operated corporation, but there is no keystone in the bridge to get from here to there, so that no matter how much we talk about it, it will collapse because there is no turnover money in it.

That is why I am asking you the fundamental question, If the committee is to sit and work on your plan we want to know what we say to the trustees of the Penn Central who, unless I am badly mistaken, are going to say something like this, that they have a problem on May 9 as to whether to put up those crew consists again, because the court and creditors are insisting they move forward, but even if they hurdle that, on July 2 the court is going to say to them, "shut down and dissolve," and on October 1 it will dissolve, as you put in your statement.

Now, this committee wants to know what your recommendation to the Congress is to deal specifically with that situation. Do we simply offer to them that there will, in effect, be maybe some long term legislation on which we have some substantial agreement because the Service Transportation Act and your recommendations parallel quite a bit, and that a corporation will be formed, and they will be given stock, and ask them if that will cure their problem on July 2?

Secretary BRINEGAR. Mr. Chairman, since our plan does not have a blank check tied to it, with a signature on the bottom, it may be a little hard to visualize, but let me try to explain it.

The keystone is that against the alternatives that the bankrupted railroads face, the option to sit down in an unfettered environment and work out a solution is quite a viable alternative. Of course, if you had two options available to them, one \$1 billion, and one a chance to negotiate, obviously they will take the \$1 billion.

The third option is piecemeal liquidation. Now they have to sit down and decide under the law of the land which of those options are realistic.

Mr. ADAMS. If you were a creditor, and this is what I have been asking these creditors one by one, and you are sitting in a bankruptcy in the Penn Central—the consortium, as I remember, has \$300 million in it, the first indenture creditors have about \$700 million in it, but these key people and I understand there is some question as to whether the deal that was put together to sell the Pennsylvania Company assets for the \$300 million, even if that is going to be approved—if somebody said:

"We will give you stock in a new corporation where we don't know what the lines are going to be yet"—in other words, the Government is not going to create the lines, the board of directors is—"and it does not have any operating history yet, but we are going to give you the stock for the assets and then we are going to borrow upon those assets out of the corporation", wouldn't you just say, "Let us go ahead and liquidate it, write off our losses now and take what we have got and run?"

Secretary BRINEGAR. I would not say that at all. I would say, what does liquidation offer me?

Mr. ADAMS. Liquidation offers them the sale of these properties which will probably come close to handling the first indenture people and the people with the \$300 million will go after the Pennsylvania Company assets, and the unsecured creditors, and the others are going to say, "Well"—I don't want to refer to it as funny money but "the stock has no viability to it yet."

Secretary BRINEGAR. You can say that about a lot of stock when it starts.

Mr. ADAMS. In Amtrak we put in loan guarantees and everything else, and when we gave it to Burlington Northern Railroad, which was one of those that bought in, for \$33 million, they wrote it down to \$1 the next day.

Secretary BRINEGAR. This is not Amtrak we are talking about. There is plenty of freight business in the Northeast, and there are lots of people who would like to haul that freight. What we are trying to say is that when you look at the kind of discount factors you would have to apply to liquidation, our proposal offers a viable alternative. You know, the Penn Central trustees talked about a 50-percent discount on some of the values, and 67-percent discount on others.

If you looked at the legal framework that precedes liquidation, and piecemeal that out over time with everybody arguing as to who gets what, and you interpret this situation in terms of present worth, and contrast it with the opportunity to take stock in a going concern, you can't say that the stock represents funny money. It is a ticket to some earnings, and that is after all what all stock is.

Mr. ADAMS. But to do that you have to freeze the situation in six bankruptcies, and have all of them agree on some kind of systems. In other words, simultaneously all must say they will accept the stock for these assets, and that it must turn over. That is why we were talking yesterday with the ICC people about where the Federal Government comes in. We are not anxious to give somebody \$1 million, \$1 billion, any figure of money. We have never talked anything other than potential loan guarantees to get private sector financing into it.

What I am saying is, if you are asking the committee to create this corporation, what date, and how do they have the power to make these bankruptcies each one different, with different creditors, come into their new corporation?

Secretary BRINEGAR. They don't have the power.

Mr. ADAMS. They don't have the power. So then we are going to hope they will do it.

Secretary BRINEGAR. They have to consider it as the best alternative.

Mr. ADAMS. Now this is where the remarks come in that have floated around about "the public be damned," and so on, and that is unfortunate, but there is a connotation that all anyone is going to deal with then are the very best economical lines. We talk about where the public is involved. We talk about the shippers, and the public service concept of trying to keep in existence for some time some rail service. If you don't have a plan, and the committee does not give them a plan, and the ICC does not give them a plan, then you get a piecemeal series of sales out of it, and a kind of bobtailed system. Now do you want us to do that?

Secretary BRINEGAR. I do not. We do not propose that.

Mr. ADAMS. Then tell me how to prevent that

Secretary BRINEGAR. We propose a four-step program. Step one is that under the concept of long term economic efficiency, we would define core rail service.

Mr. ADAMS. You, the Department of Transportation, would put out a plan?

Secretary BRINEGAR. We would identify the areas where freight service has such a potential that rail should be there. I might further say that we suspect the system will handle over 90 percent of the present rail freight tonnage in this area.

Mr. ADAMS. The other lines would be out?

Secretary BRINEGAR. Not until the incorporators have had a chance to decide whether some of those other lines might well fit into the system.

Mr. ADAMS. But they would do this on a straight economic basis?

Secretary BRINEGAR. They must look at the long term potential of the area, and open negotiations with some of the communities that might want to keep certain services, as they are keeping commuting service. It would be a phase-in program enabling them to decide how large the ultimate system would be. That is why it is difficult to say at this moment what it would look like. At 1 minute it would be a core rail system but I am certain that ultimately it would be considerably larger.

Mr. ADAMS. You would not put in an ICC review to say service is needed in that area, and to say you are getting the very good routes, so that you have to keep this area too? You would not do that, as I understand it, under your plan.

Secretary BRINEGAR. At this point we would say the time has come for fairly expedited action. The ICC's experience under its act, and the various court procedures they operate under would indicate that it is difficult for them to really move forward.

Mr. ADAMS. So then you would let the marketplace decision of the board of incorporators decide after you have given them that what the system would be.

Secretary BRINEGAR. Superimposed over the core rail service.

Mr. Barnum notes that we would require that the Board's decisions would come back for our review to make sure they meet the minimum conditions we have established.

Mr. ADAMS. Would you want statutory minimum conditions from this committee?

Secretary BRINEGAR. Yes.

Mr. ADAMS. What would those statutory minimum conditions be?

Secretary BRINEGAR. We visualize two. The first is that the core rail service, as we define it, would be met. Second, that minimum standards of competition would be met.

Mr. ADAMS. Who would police that?

Secretary BRINEGAR. We would.

Mr. ADAMS. Do you want it policed by the Department of Transportation or by the ICC?

Secretary BRINEGAR. The first time around we would police it. After the corporation is operational it would come back under ICC control.

Mr. ADAMS. Suppose it is determined by the corporation that rail service is not profitable at all in significant sections of New England.

We will say up through Maine, and out through western Massachusetts and so on, would you require this corporation to provide this service, or would you let the marketplace determine?

Secretary BRINEGAR. If it had been in the initial core rail service definition, we would require it. Likewise if it had not, we would offer the areas a chance to negotiate an agreement so that they could be continued if they pick up the losses.

Mr. ADAMS. My colleagues and I have some sort of time schedule here. When would we get this preliminary designation? You see, we may have a little disagreement, Mr. Brinegar, but I judge this very, very serious.

I was just handed a note by counsel. The judge did disapprove the Pennsylvania Co.'s sale yesterday in an oral opinion, which means that those 53 banks are now back in. I did not know it. I knew the decision was up yesterday. Now on July 2 if he collapses this railroad what do you want us to do in this period? When do we get what you are going to recommend, and what is our deadline for trying to get it through, because I would explain to you that things move very slowly here.

Secretary BRINEGAR. I would like on July 2, for the judge to see a corporation and a board of incorporators underway, and to see that he has sufficient encouragement from the financial community to conclude that the corporation is financeable. As he looks at the present worth of the assets under piecemeal liquidation he would say. "I have two alternatives on the table and it appears that the new corporation plus the liquidation value of the assets not acquired by the corporation is more valuable to my trustees than the rather uncertain piecemeal and bloody alternative that I face by ordering liquidation."

Mr. ADAMS. Now we are in agreement that the judge must have something before him, and the trustees must also. What I am concerned about, and please help us with it, is that this thing has got to be put out—we kind of follow in the committee the principle of fly before you buy—and this thing has got to be put out. We have to see and have testimony from the financial community, and from shippers, and other people who are involved in order to pass it, if it is going to be in existence by July 2. Do you anticipate doing this soon?

Secretary BRINEGAR. Yes. We will submit our bill very promptly, and, of course, we have provided you a number of statements indicating general support for our approach. As I indicated, people are often cautious, they want to know the details the same as you do. A cookbook at this point is very hard to come by.

Mr. ADAMS. I am not asking for a cookbook. This is the problem which I will repeat once more. We may be talking to different people. I don't think we are. The financial community, the operating railroad community, the people who communicate to me, and I am sure they do to the other Members, are saying, "If you put enough"—I don't want to use the word sugar—"incentives into getting us to loan money, we will do it." In other words, Government guarantees or asset protection and similar things. "But if you don't, we won't."

Now is we find out in the middle of June, or in the middle of May, that your corporation is not going to do what you said it will do, we have to do something else. I want to know how much, we have to find that out.

Secretary BRINEGAR. Mr. Chairman, I have dealt with banks a lot, and I am sure you have too in the financial community. When you say to them, "What will you do?" They will always say, "Give me a guarantee and I will do anything."

Mr. ADAMS. That is right. Start at that point. Or "if you have the money, I will lend it to you." You did not say that. We will complete it.

Secretary BRINEGAR. We are describing a reasonable vehicle, a catalyst and some incentives. Our sense of the real world is that these will work, because they are working all the time all over the place.

Mr. ADAMS. Our problem is that our sense of the real world is that in the rail industry these incentives to invest aren't working, and if we pull the plug on this thing too badly you may destroy railroad financing throughout the country.

Secretary BRINEGAR. We are not trying to destroy railroad financing nationwide.

Mr. ADAMS. I say what we are afraid of is that if you pull out the Northeast quadrant, or you establish that what you are offering up there is just hope, and the financial community, most of them I know, are ready to cut and run out of the Northeast, that other people who are going to be coming in asking for railroad financing, are going to say, "What will be your terminal connections in the Northeast? How are you going to handle this problem? And it does not look good to me." That is what I mean about the overall problem. You have to know at some point what the reaction is going to be.

Certainly this committee can't call in the financial community now and ask them, because they are going to say to us "We don't know what the system is. We don't know what the corporation is. We have heard the Secretary testify," and believe me, there are a lot of people listening to what you are saying this morning, "and we are waiting until we know."

Now, on the other hand, if this committee goes ahead with what we know, or based on what we are getting, we know what we can do to get them to move, but I gather you don't want us to do that.

Secretary BRINEGAR. We think the taxpayers of the Nation, who are not in the Northeast particularly, are somewhat interested in a solution.

Mr. ADAMS. Right. If we use a loan guarantee system, and your system works the way you say it will, and we turn it over and get it started, the taxpayers are not going to lose a dime, or put up a dime.

Secretary BRINEGAR. Loan guarantees are one step of course toward direct loans. You may well end up taking the pressures off.

Mr. ADAMS. You and I know we can go to the New York banker and he will give you a loan down 50 basic points.

Secretary BRINEGAR. I can't foreclose speaking to the financial community. Perhaps you should call them in and ask them.

Mr. ADAMS. We will as soon as we have something to present to them.

Secretary BRINEGAR. I think what you should present to them is not would you finance the Penn Central. The question is would you finance a new Chessie system? Would you finance a new Norfolk & Western? Would you finance a new Southern Railway? Those are the questions, because that in fact is what we want to see built in the Northeast.

Their answer will be, "Produce me one and we will finance it." That is the basis we are working on. We are not talking about struggling with the Penn Central. We are saying, "Pull a healthy railroad out of that wreck and it will fly or 'rail', or whatever it does."

Mr. ADAMS. I have taken too long, Mr. Secretary.

Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Secretary, may I ask you to set the stage of this scenario?

Secretary BRINEGAR. Yes.

Mr. KUYKENDALL. You have some impatient trustees who have some impatient lenders. You have a distraught Congress not willing to further prop up a failure. You have a system absolutely essential to national health and security. You have 108,000 very interested working people who must ultimately concur with any long-range decision.

Now, I believe you are a business executive and nonlawyer; is that true?

Secretary BRINEGAR. Yes.

Mr. KUYKENDALL. Then I believe I can trust you to answer this question. I want you to tell us in 3 minutes what you have in mind to do. I think maybe the financial community is backing away. We have had some people interested in nationalization that violates every single bit of their basic philosophy of government, yet they come up here talking for nationalization for one reason only, a bail out.

We are not going to bail out with nationalization. Anybody who invests a dollar in a corporation has got to risk bankruptcy. The investors should have pressured Mr. Saunders and company about 7 or 8 years ago, and not us today.

Now I have given you 2 minutes to think over your 3-minute answer on what you want us to do.

Secretary BRINEGAR. I will take 10 seconds of my answer to add to the list and say you have a very concerned Secretary also. We have never taken the matter lightly.

Mr. KUYKENDALL. We have never doubted that.

Secretary BRINEGAR. We would like to create the proper relationships between the affected parties so that they could work out their problem with a Federal overview. I did not say there was no Federal role, nor did I say that there were absolutely no Federal dollars. I said that they ought to get started without the idea that there is a blank Federal check lying there. If there is a blank check lying there, your answer is totally different than if there isn't, as you well know from negotiating experience.

We feel that Congress ought to create the environment to permit this sort of free interchange of the affected parties to take place. We propose a new corporation, a board of incorporators with the safeguard of the core system that we would designate. This new board of incorporators could function and could deal with the affected parties and offer them, to use the advertising phrase, a better idea than the one they have lying on the table, which is the horrible alternative of liquidation.

Mr. KUYKENDALL. If you will yield for just a moment. I would like you to interject what this subcommittee's role should be.

Secretary BRINEGAR. You have to approve the bill that we are going to submit to you about the day you get back from recess. This

bill will authorize the creation of the new corporation, and empower the Secretary to designate under guidelines the core system. That will start the process in motion, and provide adequate encouragement to the affected parties to find the solution, to reach and pull out of this rather legally entangled wreck a new system for the Northeast.

The Northeast has more rail system per mile than most of the regions in the country. There is no reason it could not have a healthy railroad if it had a kind of rebirth. We would like you, to use a phrase that became popular with trips to the Moon, to open a window in time, so that we could get in this window, this piece of time, and solve it.

We think there are added values and incentives that would cause it to happen. We believe it is proper for you to call in the affected parties, the shippers, the bankers, the financial community, and test some of their conclusions. I think you will find that all will say in honesty, finally, it is possible and certainly worth working on. This is what we are saying.

Other good railroads are getting financing. Other good railroads are prospering. There is plenty of business up there. We know for sure the financial community will loan money to healthy railroads, and why can't one work there? As you properly put it, when you invested money, loaned money in the past, or bought stock, you ran the risk you might not get it all back.

We are saying that some of the things in the past, some of the regulatory burden which we speak to and the chairman has spoken to, some of the past errors can be corrected, and rail may have a fine future. If we are going to become the world's breadbasket, as we may well be approaching, we certainly need a good healthy rail freight system. It could in time certainly be as profitable as the trucking industry.

Let us get going. Let us not start on the wrong foot by putting a lot of money on the table so that we are perpetuating a lot of inefficiencies.

Mr. KUYKENDALL. I have one last comment. In dealing with labor I have found an interesting bit of human psychology in the reaction I have gotten from their leaders across the country. If they really know what the situation is and know what their future may be, and that the business is in trouble, they have shown an amazing willingness to cooperate. I can show you a packinghouse in Memphis that is there only because a local took action. But I have also seen bad communication cause just the opposite of that to be true.

To what extent are you communicating with the labor community, as to their role?

Secretary BRINEGAR. I agree completely. I have tried, as a representative of the public interest, to start communicating my findings and hearing reactions. I had a meeting prior to March 26 with three of the leaders of the major unions. Last week I met with six of them in a free swinging discussion of how the future is shaping up. Secretary Brennan joined me at that meeting. I completely agree, and this goes back to my prior business experience, the Nation's business and labor leaders are distinguished gentlemen who do understand what we are saying. When the family needs help they are there to help.

I think their understanding of the problem is a good one and indicates their willingness within the framework we have outlined of

adequate handling, adequate protection, adequate compensation, to see the problem solved too. I have indicated in my testimony that a careful look at the components of the labor situation may show that it can be managed. It should not be handled precipitously.

I am talking to them almost once a week to ascertain if there are any new matters we should be aware of or whether they have any suggestions. I agree that they would like to see us solve the problem. Certainly they have more at stake in liquidation than anyone else. They want to see us find a way out. I can't say that necessarily they would embrace alternative a, b, or c, but they do want to see something move forward that would properly care for the labor people. I think that within our approach that can be done.

Mr. KUYKENDALL. Thank you.

Mr. ADAMS. Mr. SHOUP.

Mr. SHOUP. Thank you, Mr. Chairman.

Mr. Secretary, I think Mr. Adams has rather clearly stated a feeling that we have on this committee that perhaps your ill is a continuation of a disease we have in Congress, and that is the walking the plank syndrome, that there seems to be no alternative that if private financing is not acceptable, or the promise, or the lure of private financing does not come through, where are we? It seems we are here at midnight trying to solve, as we have in the past, a labor problem. I do not think the committee will accept this type of approach. What we are attempting to do is to preclude this type of thing.

I would like to go through your testimony and clear up a few places specifically.

Secretary BRINEGAR. May I comment on your remark?

Mr. SHOUP. Certainly.

Secretary BRINEGAR. I certainly don't like gangplanks either. We are not proposing it. Nor are we proposing just idly sitting by and saying, "Let us see what happens."

What we are trying to propose is the alternative to what has happened in Government so much in the past, and that is, "Let us throw some dollars out and see what happens, because dollars have a great way of relieving pressure." They create new problems, but they certainly take the pressure off.

Again, in my experience in the business world, and those of you who have been involved, pressures do in fact create solutions if reasonable people have reasonable room within which to negotiate. We are hoping that we can find a way to cause this to happen.

Mr. SHOUP. I would agree with you. However, in reply to Mr. Adams' question about what time you could present a plan for an identification of the core area of those lines which would be included, I find the answer is 90 days after your bill is adopted you will come up with a plan. I find that this is a gangplank type of approach.

May I then ask you this question. I think you have been aware of the problem. I think you have been studying this for something like a year now energetically. I think you have been aware of the problem we have up there. I wonder why before you come up with such a tentative plan. It would seem that this would be some of the responsibility of the Department of Transportation to present an alternative.

Secretary BRINEGAR. I have been in office only since February 2. Further, there was much hope, as I gather, last year than an income-based reorganization was possible by Penn Central particularly. In other words, the shift—

Mr. SHOUP. Let us say there were a few that had that hope.

Secretary BRINEGAR. I found no contingency plan hidden away in our Department to handle the case when Penn Central did not make it. The way to go may have emerged fairly promptly.

Let me just clarify the point. The trustees and the judge do not need a solution on July 2, or October, or what have you. They need encouragement that the solution that is coming is better than the alternative that they face.

Mr. SHOUP. Maybe I am suggesting you should identify the solution, refine your solution a little bit more. I think we have covered this quite well. As you say, you have only been here since the 2d of February. What we have on the record is with the previous Secretary.

It may seem rather elementary, but I would like to have the position on the record of the Department of Transportation. Is it your contention that the alternate modes of transportation in the Northeast cannot handle the freight requirements if the rail transportation should close down?

Secretary BRINEGAR. You are talking about truck?

Mr. SHOUP. Yes, any other type of transportation.

Secretary BRINEGAR. We say in our statement that rail is needed.

Mr. SHOUP. It is essential?

Secretary BRINEGAR. Yes.

Mr. SHOUP. You make a statement on page 3 that it would be discriminatory for the proposal of taking over the railbeds of the Northeast systems. Would you care to comment on the proposal which has been made of this concept for all of the railbeds?

Secretary BRINEGAR. I think it is unneeded. It would be very costly. I think the rail systems of the country could handle it themselves if they had adequate freedom to operate.

Mr. SHOUP. You were speaking of how healthy the trucking business is at the present time. They operate not on a privately owned roadbed but a publicly owned roadbed.

Secretary BRINEGAR. But they have done a great deal to finance it through user taxes. The trust funds have built the Interstate System, plus a lot of other highways in the country.

Mr. SHOUP. You would not consider this as a nationwide alternative or possibility? Are you investigating this at all?

Secretary BRINEGAR. We have had an internal analysis of it and have concluded that it is not necessary.

Mr. SHOUP. I am somewhat bothered by your statement. I think someplace in the latter part you speak of being in partnership with the ICC, but you are quite outspoken in that you want to preclude their responsibility and take over the decisionmaking. As a partner what is the feeling of the ICC on this?

Secretary BRINEGAR. Partners often have disputes, yet they remain partners.

We feel, as I indicated, and share your committee's view that time is of the essence and the time is here for some rather rapid movement as we propose.

Mr. SHOUP. If it is going to necessitate legislation for you to act in this method, and you act to take care of this one specific problem, and once you solve this problem, you throw it back in the laps of the ICC which does not have, and I would tend to agree with you, the legal ability to handle such situations, aren't we merely putting off

the solution to the problem? Why then do you not recommend that legislation that would enable you to act promptly be so constructed as to allow the ICC to act in the same manner with the same rapidity?

Secretary BRINEGAR. I can only speak for our abilities and experiences and believe that we could describe the procedure and proceed with it within the guidelines that were specified in the bill. The ICC has a long history of procedures that have not encouraged them to act promptly.

I just have to say at this point that I share the committee's desire to move rapidly and I hope that we have proposed a way to do it. Of course, both of us are in agreement on future abandonments which would help provide a way of avoiding a new Northeast wreck.

What we are saying is that we feel this window in time I have referred to should be open.

Mr. SHOUP. It seems as though you are contradicting yourself that you want the ICC to allow legislation for rapid abandonment.

Secretary BRINEGAR. I am talking about postrecovery.

Mr. SHOUP. After postrecovery.

Secretary BRINEGAR. Yes.

Mr. SHOUP. I question the advisability, personally, of switching command, of who is in charge.

Then if I may move along, on page 8 and I think you can clear this up for me, you refer in your statement of setting up a viable organization to actually own, to take over the assets. Then on page 8, I think you used the specific words, you say "This board would select assets". Later on you refer to the fact that it would be an operating organization. Could you clarify that? Do you understand my confusion there?

Secretary BRINEGAR. Yes. We visualize that initially this board would function as an incorporating body. They are not the operating body at the start.

They are the catalyst, the organization that gets it going. They serve as the initial board of incorporators and, in fact, may put in place two new corporations that would then become the operating bodies.

Mr. SHOUP. Then who would own the assets?

Secretary BRINEGAR. The shares would be owned by the estates. They would give shares to the estates in return for title to the assets. The corporations would be owned by the estates.

Mr. SHOUP. But the corporation would not be the operating entity?

Secretary BRINEGAR. The new corporation would, yes. But its ownership would be held by the estates.

Mr. SHOUP. Now we spoke, I think, on your feeling of private investment without any Federal guarantee, no Federal participation, which you eliminate any reference to within your written statement. On page 19 I find it interesting that you are quite specific in that you are opposed to the position taken at the present time under the Amtrak approach, Federal participation on local option for continuation. You are opposed to that. Is the Department of Transportation opposed to the passenger approach at the present time?

Secretary BRINEGAR. I see a distinction between passenger service handled solely by Amtrak as a last resort so to speak, and freight service for which there is adequate competition and where alternative modes of transportation are available. I do see a distinction.

Mr. SHOUP. Then you feel it is justified under Amtrak for Federal and local participation to work together, but not in freight?

Secretary BRINEGAR. To make a long time permanent commitment is a little harsh, but what is working now in Amtrak seems a good way to get it started. However, we do not see that freight necessarily falls in a parallel situation.

Mr. SHOUP. It would not be necessary to offer that little bait that we did to the local lines, that if you want to continue passenger service the local community would put up a certain percentage of the loss and the Federal Government would come with their share?

Secretary BRINEGAR. We hope not, because the benefit of the service would accrue pretty well locally.

Mr. ADAMS. Would the gentleman yield for a moment because I did not cover the passenger system at all with you, and Mr. Shoup has raised that question.

What do we do with the Penn Central's corridor system? Under this system does it go into the freight corporation? Is it going to be part of Amtrak? Is it going to be liquidated? What happens to the service between Boston, New York, Philadelphia, Baltimore and Washington, D.C.?

Secretary BRINEGAR. The service is presently being handled by Amtrak.

Mr. ADAMS. It really isn't. They contract with the Penn Central. The Penn Central says they are not being paid enough and they are going to shut it down as sure as God made little green apples if they have anything to say about it in a reorganization unless the Government pays for it. Should we put something in the bill, in Amtrak's bill or some other bill, for that? What is your recommendation that we do with that?

Secretary BRINEGAR. Our view right now is that recommendations as to the future handling of the corridor passenger service should be deferred until the board of incorporators has picked the assets they want to operate. They might decide that that right-of-way is so valuable that they want it. What they need is a different relationship with Amtrak. It is very difficult for us at this point to again "cook book" the details. We indicate in our report that this will require possibly separate handling after the board of incorporators has made its recommendation.

Mr. ADAMS. Mr. Secretary, you just have to have a plan at this point. You must have in mind, with all the months of study that have been in this, what you are going to do up there.

Secretary BRINEGAR. We are going to keep it going.

Mr. ADAMS. Mr. Shoup.

Mr. SHOUP. My final question. I am going to read a sentence on top of page 22, Mr. Secretary. It says, "We have tried to say that no one really knows enough at this time to lay out specific dollars or dollar commitments."

I have two questions. Why don't you know now, and when are you going to know?

Secretary BRINEGAR. I don't know now because I don't know what service should survive in the long term. Nor do I know the labor staffing, nor some of the other elements we discussed. Nor do I know the ability to raise money in the private market. These again come back to starting a corporation.

I have been around a few ventures and I know what happens in many situations. You sit down and you start going. For a man to say, "Here is my book, and here is what it is" on day one is to overreach your ability.

Mr. SHOUP. I think you underestimate the ability of the people who work for you in the Department of Transportation. I think they could come up with something.

Secretary BRINEGAR. I think we can speculate a bit and put down alternatives. But to say that this is what we will have after these parties have sat down and hammered out the final system is to overreach what we are really capable of doing. We have to prescribe a procedure. We cannot prescribe a solution.

Mr. SHOUP. Mr. Secretary, don't we have to start someplace? Doesn't somebody have to take the first step, make that first proposal? I think this is what Mr. Adams is saying, what we are all saying to you. As the responsible agency in this, the logical one, we are asking you to come up with a suggestion.

We would like to have a specific suggestion that we can get our teeth into and a basis from which to start. We may not agree with you. You know, with respect to what you have here. I wish you had somebody sitting alongside of you from the private sector who would say, "We think it is a great idea and we will put up the money for it." I wish we had that. That would be Utopia. But we don't.

Secretary BRINEGAR. I would worry that I had somehow given away something if we had that.

Mr. SHOUP. I would say you should have more faith in your plan here. I think you indicated that the private people would do it.

Secretary BRINEGAR. I think if you will read the material that we have filed, and other material that we will prepare for you, you will see a general agreement on the thrust. There is a natural concern, everybody has some qualifications to something of this nature. But as a direction, as a thrust, we think that what we propose is the right way to do it, and it will work.

For me to come up with a package that says, "This is the mileage, and this is the track, these are the dollars", that is simply not possible unless, of course, the Federal Government says, "And we will sign the bottom line of the check." Of course, you can always do things like that, but it is not fair to the taxpayers.

Mr. SHOUP. I think this is what bothers us—and Mr. Adams brought this out yesterday in his discussion with Mr. Stafford—first before you talk about money or anything else you are going to have to determine the costs in the core area, what areas are you going to serve, and that can be done, I think, on a very simplified formula.

Secretary BRINEGAR. We would propose, as I indicated in my testimony, to identify the areas where the current and potential traffic indicates that rail is the best long run way to move the freight.

Mr. ADAMS. Can't Mr. Ingram give us a computer run on that now?

Secretary BRINEGAR. We are working on it.

Mr. SHOUP. I think, Mr. Secretary, again, to restate it we have a lot of faith in the Department of Transportation that you can do this for us, but you seem reluctant, without legislation to direct you to do it you don't want to. You say 90 days after legislation you can come up with this core area. Why wait?

Secretary BRINEGAR. Thirty days after the enactment of legislation we would put out a tentative finding for public comment.

Mr. SHOUP. What is 30 days from today, Mr. Secretary?

Secretary BRINEGAR. We certainly would like to have the legislation so that we can get started.

Mr. SHOUP. Can't you get started without it? Don't you have authority as the Secretary to do that now, to delegate that, to instruct someone to do that?

Secretary BRINEGAR. We certainly are working on what we think it ought to be. We are not sitting idly spinning our wheels. A part of the solution is to identify the core rail system, and let the incorporators decide what specific services they will provide in that system, plus whatever additional service they want to offer, negotiate with labor, the financial community, the creditors. These steps will move us forward fairly rapidly. They should offer enough encouragement to the trustees and judges so that they will defer liquidation.

As always, if you publish a map everybody wants to come in and legislate on a map. The country has had an awful lot of that in the past. We would identify a core rail system on the basis of procedure prescribed in our bill. This would lead to efficient use and the long-term health of the railroads. We think that the actual lines, which tracks, which terminals, can only be selected by the incorporators on the basis of the assets available to them. That is the way companies get started.

Mr. SHOUP. Mr. Secretary, here you say you can do it.

Secretary BRINEGAR. No; core rail service is not a bunch of tracks. As I said, it would identify the areas that should be served by rail. The incorporators are going to have to select the actual tracks and terminals they will use.

Mr. ADAMS. Will the gentleman yield for a moment?

Mr. SHOUP. Go right ahead.

Mr. ADAMS. Now they designate a corridor. I will go through briefly with you what I did yesterday with the ICC. You have sitting with you some gentlemen who know a great deal about this, too. You have four potential systems with six companies operating in the bankruptcy, plus two viable railroads. You have the Northeast area with the Boston & Maine, and the question, are you going to use the Boston & Maine route across the mountains, or are you going to use the Boston & Albany and the Penn Central System? You have the problem as you go down through the New York area, you have the Jersey Central, the Reading, and Lehigh, and remnants of the Penn system, all of which have a degree of redundancy in them. You have going across the top the Erie and Lackawanna, and the B. & O.—C. & O. You have in the central part of the Penn Central system which to a degree competes with, to a degree is involved with, the Lehigh Valley, the Reading, and also with the Jersey Central.

Now somebody is going to lose out, and the decision is going to be made, "Okay, we are going to take the tracks from the Reading Railroad," or "We are going to take the tracks from the Penn Central," and that is what is going to happen. The lights are going to go out for somebody.

Now there is a great deal of involvement by people in the financial community, by operating people, by others, as to which gateway is used, whose track, whose assets are brought as opposed to having to be liquidated.

I will close with just this example, and if you want you may consult Mr. Ingram about it. You can take a viable railroad like the D. & H.

and depending on which connection you put into it, Mr. Secretary, the railroad will go out of business or stay in business. Now there will be some interest as to who is on this board of incorporators. I don't know under your proposal whether they are going to get together in a room someplace and say, "Okay, you are in and you are out", or what.

We had kind of visualized, that is what I was asking the ICC, that you do a public thing, you give people a chance, shippers, communities, the viable roads, the bankrupt roads, to operate in this. But my understanding of your proposal is that you would designate a corridor. It has to be a corridor across the Northern part. There has to be a corridor coming into New York from the South, a corridor coming into New England, and the incorporators will have to decide who is in it.

Will you tell me if I have described your proposal correctly? I don't want to put words in your mouth. I would like you to tell me.

Secretary BRINEGAR. You are asking for details that will emerge.

Mr. ADAMS. I am not asking for details of who will be selected, because you would have a lot of people in this room faint if you said, "You are in, and you are out." I am just saying who in your proposal is going to, for example, decide, "Okay, we are going to close down the Reading, and we are going to close down the Jersey Central."

Secretary BRINEGAR. First, we are dealing with the bankrupts only. We are not dealing with the nonbankrupts that serve this area.

Mr. ADAMS. You are.

Secretary BRINEGAR. You could, right, but the proposal as I said is that initially you deal with the system offered by the bankrupts. If they want to negotiate with the nonbankrupts, that is their privilege.

Mr. ADAMS. What I am saying is that you have the other railroads involved in both stockownership, creditor relationships, gateway relationships. What offers are made—this is what we mean about throwing it into the private sector—have enormous impact on the viability of those that are still viable, and the potential of others like the Erie coming out. If you decide the Erie is the system, the Erie can come out of bankruptcy. If you decide you can use B. & O.—C. & O. and remnants of the Penn Central system, the Erie might well never come out. I am asking you who is going to make this decision.

I think you have told me it is a board of directors appointed by the President in this corporation, but with no ICC review. I think you told me that your department would make no review other than to see that two things happen. One, there was competition in high-density markets, and second—I will read it to you on page 8:

In designing the system the Board would apply two criteria: economic viability of each element of the system, or systems, and preservation of rail service competition in high density markets.

Now if that is so, is what you are telling me that the board of directors will make these decisions?

Secretary BRINEGAR. Their job is to design the best railroad system they can out of the assets that are offered to them.

Mr. ADAMS. It is in their best interest in the marketplace?

Secretary BRINEGAR. Yes, it is. That is part of the problem, of course, that the Northeast has had. The railroad has not been of the nature that has adequate long-term economic sense. It is the board's job within the framework, the overview, and the criteria that we have specified, to work with the assets of the bankrupts. If they want

to, they may negotiate with the nonbankrupts, regarding such other assets as they can deal with and to find a solution that is satisfactory to the interested parties.

Mr. ADAMS. Now you have mentioned before, and it is one of the keystones of your presentation, that people loan to viable railroads and that they do exist. You have used examples. I think you used the Southern and the Southern Pacific. You could go into others. Do you really believe that the rail system in the Northeast, which is a short haul terminal operation, is comparable to the Southern, or to the Southern Pacific, or to the Burlington Northern, which have basically long haul system and lower terminal costs? You may want to talk with your people.

Secretary BRINEGAR. I do.

Mr. ADAMS. You do?

Secretary BRINEGAR. I do. We have looked at that. We feel that the average haul in this area is not as short as some might think. These are fairly complicated matters, but we feel that in fact the section can be financed, and it would be a very profitable railroad system. The traffic density is very, very high. As we have said in our report, there may be some regulatory reforms needed in terms of future ratemaking ability, and future ability to move a little more with the times.

Mr. ADAMS. What about the division of rates with the present roads that are connecting now into this area?

Secretary BRINEGAR. We will have in our regulatory proposals our recommendations on these matters.

Mr. ADAMS. Mr. Secretary, unless I miss my guess you are going to go back to your prior proposal which was a zone of reasonableness, or setting of rates according to market conditions, and you are going to throw this new baby into the bath with the established people on rate divisions, is that correct? Only there will be a zone of reasonableness so that the ICC will not directly make rate divisions?

Secretary BRINEGAR. I think you miss your guess.

Mr. ADAMS. All right. Then tell me.

Secretary BRINEGAR. We have not submitted our bill yet.

Mr. ADAMS. Mr. Shoup, I go back to you.

Mr. SHOUP. Thank you very much.

Mr. ADAMS. Mr. Secretary, I am not trying to make it difficult for you, but we have lived with this thing now up here for a long time. We have got to have something definite to go on or else we are going to have to play this kind of game with you which is that you come up with your proposal, we pass it, and we see whether or not it flies. If it crashes in flames out there, then we come in with a second solution, and with that second solution, after the bad taste that is left by the first one, I don't know what we will get.

Secretary BRINEGAR. Sir, our job is not to bring about wrecks in any of the modes we deal with.

Mr. ADAMS. I hope not.

Mr. Shoup.

Mr. SHOUP. Thank you, Mr. Adams.

On page 7, Mr. Secretary, and this is what I was speaking of, of something that we need, something concrete, you say:

We propose that the Secretary of Transportation be empowered to identify this core service with provisions for the input of views by all interested parties. We believe that 90 days is adequate time for this step.

Mr. Secretary, you are asking to be empowered to do this by Congress. Would a request by this committee that this information be provided us in the next 90 days be out of order?

Secretary BRINEGAR. Sir, if it is the purpose of just having more hearings, and sort of adding to the pile of things, we would like to see the whole thing move forward. We visualize it as an integral part of our proposal so that the trustees know in fact that more is going on than just studies of the core system. So, we have it as part of our bill, and would like to see it included as part of our bill.

Mr. SHOUP. I would hope that you have the feeling of the committee that they would like to have something along this line before they enact a bill as a prerequisite to give us some indication of where we are going.

Secretary BRINEGAR. Certainly, sir, this is getting to the heart of the matter. The Interstate Highway System was not designed by Congress, I don't think.

Mr. ADAMS. It was, Mr. Secretary.

Mr. SHOUP. I thought that was quite obvious.

Secretary BRINEGAR. The idea was in the bill. I think the mileage was laid out elsewhere. You know, historically the ICC has done this and we have discussed the reasons why we don't think they are the right body at this point. We believe that we are close enough to it and do have the knowledge and can provide the guidelines so that we can proceed ahead in a manner that is in the public interest.

Mr. SHOUP. I will buy that 100 percent. Will you do it 90 days from today?

Secretary BRINEGAR. As part of the whole bill?

Mr. SHOUP. In other words, no, you won't; because you won't get a bill passed today, I can assure you, Mr. Secretary.

Secretary BRINEGAR. We don't have the bill before you.

Mr. SHOUP. That is what I am saying.

Secretary BRINEGAR. We want to move ahead on all fronts. We are not sitting idly by as I have said. We want to make sure what we are doing in fact leads somewhere. We have to come back to what I said a couple of hours ago: When the trustees and judge sit down in the summer and look at the options, the options are to proceed ahead with the private sector-type solution that provides adequate streamlining and adequate protection as we have in a general framework tried to suggest, or to shut down. We think that our solution will encourage people to take our route and it will work.

Mr. SHOUP. No further questions, Mr. Chairman.

Mr. ADAMS. Mr. Secretary, do you or your staff people wish to make any further comment to the committee?

Secretary BRINEGAR. Not at this time.

Mr. ADAMS. We appreciate very much your being here this morning. I hope what we have done has been productive.

The committee will stand adjourned until Thursday morning when we will have the trustees of the Penn Central Railroad before the committee for testimony on the same subject.

The committee will adjourn until Thursday at 10 o'clock.¹

[Whereupon, at 12 noon the subcommittee adjourned, to reconvene at 10 a.m., Thursday, April 19, 1973.]

¹ The appearance of the trustees of the Penn Central Railroad was postponed and subsequently rescheduled for May 8, 1973.

NORTHEAST RAIL TRANSPORTATION

TUESDAY, MAY 8, 1973

HOUSE OF REPRESENTATIVES;
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John Jarman [chairman] presiding.

Mr. JARMAN. The subcommittee will please be in order.

Today we resume the hearings on the Northeast rail problems which this subcommittee started on April 16. Because of the Easter recess and the full committee's consideration of the railroad retirement legislation, we postponed these hearings for 2 weeks.

As I said in my opening remarks on April 16, while we will focus our primary attention on the immediate crises in the Northeast, we want to also consider the broad problems involved throughout the country not only in the rail transportation field but also in the other surface transportation modes.

This morning we have with us trustees in bankruptcy of the Penn Central Transportation Co. These gentlemen were originally scheduled to testify before this subcommittee on April 19; however, we were forced to postpone the hearings, and we wish to apologize for any inconvenience this may have caused you.

Let me at this time introduce Mr. Jervis Langdon, Jr., for the record and ask Mr. Langdon to introduce his associates this morning and to then proceed with your testimony as you have planned.

STATEMENT OF JERVIS LANGDON, JR., TRUSTEE OF THE PENN CENTRAL TRANSPORTATION CO.; ACCOMPANIED BY GEORGE P. BAKER, TRUSTEE; WILLIAM H. MOORE, PRESIDENT, PENN CENTRAL TRANSPORTATION CO.; CHARLES A. HORSKY, SPECIAL COUNSEL TO THE TRUSTEES; AND ROBERT W. BLANCHETTE, COUNSEL TO THE TRUSTEES

Mr. LANGDON. Mr. Chairman, on my immediate right is Mr. George Baker, who is one of the three trustees; and sitting next to him is Mr. Moore, who is president of the Penn Central Transportation Co.; and sitting next to Mr. Moore is Mr. Horsky, special counsel to the trustees; and on my left is Mr. Blanchette, counsel to the trustees.

Mr. Bond, sir, is the third trustee, who unfortunately, because of an annual meeting of his company today, could not be here. There are three of us with equal authority, and this was an engagement for Mr. Bond that the postponed date conflicted with.

Mr. JARMAN. We understand and appreciate your being with us. You may proceed in your own manner with your testimony.

Mr. LANGDON. At the outset, we wish to express our appreciation for the opportunity to appear here today. The Penn Central reorganization has developed into a situation of extreme urgency, and deadlines for results imposed by our court are rapidly approaching. We cannot overstate the importance of a prompt decision by the Congress on the appropriate measures to be taken to avoid the consequences of a large-scale cessation of rail service on the Penn Central System.

The major developments in the Penn Central case are traced in our several reports to the court that is overseeing the Penn Central reorganization proceedings. We should like to make a part of the record of this hearing the last two such reports, dated January 1 and February 1, 1973. [See p. 255 and p. 262.] After reviewing these reports, Judge Fullam, on March 6, 1973, concluded that the constitutional rights of the owners of the Penn Central estate were being threatened by the continuation of railroad operations at substantial and recurring losses. In the absence of progress toward putting the railroad on a sound financial basis, the court found it highly doubtful that Penn Central could be allowed to operate on its present basis beyond October 1 of this year.

The court required us to report on July 2 whether actions by the Congress make a plan of reorganization feasible and, if not, to submit proposals for liquidation or other disposition of the enterprise. We should like also to make the court's memorandum and order a part of this record. [See p. 272.]

Our July 2 advice to the court will be guided in large part by the reaction between now and then of the Federal Government to our situation. The problem may be simply stated: Most of Penn Central's services are essential to the national interest. At the same time, the large deficits are eroding the owners' interest. Two factors, the public need for Penn Central's services and the premise that private property cannot be taken for a public use without compensation, are on a collision course. Only Government action can resolve that conflict. In the absence of such a resolution, we must go down the uncertain path of liquidating an enterprise of unprecedented size and importance.

The announcement of these hearings stated that they would be on H.J. Res. 50, introduced by Mr. Eckhardt and others, and on H.R. 4897 and H.R. 5822, introduced by Mr. Adams. The committee has also considered in its deliberations the two reports dated March 26, 1973, one by the Secretary of the Department of Transportation and one by the Interstate Commerce Commission, together with a proposed bill now before you as H.R. 6591. Our comments will therefore cover all of these proposals.

COMMON PREMISES

Each of the proposals before you, except House Joint Resolution 50, deals with the problem of the northeastern railroads rather than Penn Central alone. They vary widely in their recommendations, but one significant fact emerges quite clearly: There is a remarkable consensus as to the premises on which any solution to the problem must be constructed. Despite the variety of solutions, in other words, the problem is defined within quite narrow limits.

The two bills—H.R. 4897 and 5822—and the two reports all appear to accept these premises:

1. Excess rail plant in the Northeast is a major cause of the problems of the railroads that operate in that area.

2. While a variety of methods is proposed to achieve a reduction to a system that will have economic viability, they all contemplate some form of enabling Federal legislation. There is also general recognition that the reduction must be accomplished at a much faster pace than is provided by present Interstate Commerce Act procedures.

3. As to branch lines that do not generate enough freight revenue to operate profitably, it is generally felt that the service should be retained only if the affected States, communities, or shippers are willing to contract for support of the service on a businesslike basis.

4. There is agreement that freight service should not and cannot continue to subsidize either intercity or commuter passenger service. This is a major concern for Penn Central, particularly in the Boston-Washington corridor.

5. There appears to be agreement that any reduced rail system in the Northeast will need fewer employees. As a result, the question of labor protection and job retraining for affected employees is a major factor.

6. It is conceded that the financial position of the railroads, particularly in the Northeast, has been so precarious for so long that funds have been unavailable for adequate maintenance of plant and equipment. Consequently, there is a pressing need for major expenditures to modernize and upgrade whatever rail system is retained.

7. And last but by no means least, there is recognition on all sides that there is need not only for action but also for prompt action. As we have already said, the Court is to consider on July 2 whether the operations of Penn Central can be permitted to continue, and the result of that hearing may mean a cessation this summer of Penn Central operations as presently conducted. The situation as of now of the other bankrupt roads does not appear to be much better.

APPLICATION TO PENN CENTRAL

Our responsibility, of course, is as trustees of Penn Central. It is significant that these overall premises to which we have just referred are entirely consistent with the conditions to a successful reorganization of Penn Central itself. Since 1970, when Penn Central went into reorganization, our efforts have been to accomplish four things which were essential to a private-income-based reorganization of that enterprise:

First, the elimination of unprofitable freight lines. Second, the elimination of unnecessary employees. Third, adequate compensation for passenger service or the elimination of uncompensated service. And, fourth, an adequate rail system providing the kind of service that would increase the volume of our freight traffic and revenues. The points of agreement just described address themselves to these goals.

Because we could not accomplish these objectives within the time we have—that is, before the erosion of the Penn Central estate becomes an unconstitutional taking of the property of the Penn Central owners—we now must have outside help or the operation will have to stop.

So far as Penn Central alone is concerned, the report filed by the trustees on February 1, 1973, to which we have already referred, outlines the alternatives for Federal action in some detail. In summary, they amount to the following:

1. A viable Penn Central must be reduced in size. The maximum benefits, and hence the greatest likelihood of a permanently successful reorganization, would leave some 11,000 miles of railroad. A larger remaining system, such as the 15,000-mile system which the trustees have considered, would require greater outside assistance and would be of more doubtful long-term viability.

2. A viable Penn Central requires that means must be provided for speedy action either to eliminate, or to provide Government or shipper support for, the lines not necessary to the reduced system.

3. A viable Penn Central requires that means must be provided for speedy relief from all uncompensated passenger service.

4. A viable Penn Central requires the elimination of two categories of unnecessary employees: Those who must now be employed because of arbitrary crew-consist rules and those who would be rendered redundant by the essential reduction in the size of the system.

5. Finally, it is not possible, on our calculation, to impose on the reduced system, whether its size be 11,000 or 15,000 miles, the costs both of labor protection and of deferred maintenance. It was for this reason that the trustees suggested, on February 1, that a major part of the cost of modernization and upgrading of the reduced Penn Central plant—\$600 million to \$800 million by 1976—would have to be supplied by the Federal Government, at least until the reduced system has developed an earnings record which can attract private capital.

The Federal Government could go far toward providing viability for a reduced system if it assumed the costs of protecting and retraining those employees whose services would be unnecessary.

The February 1 report to our reorganization court included a further suggestion which we believe merits careful consideration by the committee; namely, the acquisition by the Federal Government of the northeastern corridor—from Washington, D.C., to Boston—for passenger use. This corridor is preponderantly a passenger operation—intercity and commuter. At a minimum, continuation of this corridor passenger service will require continuation of present- and to-be-negotiated payments for contract operations, including compensation from Amtrak on the basis of fully shared costs and return on investment.

In such case, the trustees would take most seriously an offer by the Federal Government to take over this corridor on a basis of just compensation with due regard to the costs of relocation of freight service. Depending on what was done to insure the viability of the remainder of the system, the terms of the acquisition could be an essential component in structuring a reorganization plan for a private enterprise railroad.

In this regard, attention will have to be given to the costs to the purchaser of industry relocation or new rail connections to permit continued rail access by Penn Central to those industries presently given freight service.

We do wish to emphasize, however, that, although Government acquisition of the passenger corridor may well be justified, we do not see a similar need for the program stated in House Joint Resolution 50

that the Government should acquire and operate the entire enterprise. House Joint Resolution 50 appears to us to be the least desirable as well as the most expensive approach which this committee could take. H.R. 4897 and 5822, which provide for Government ownership of the entire restructured roadbed, may also create a larger obligation on the part of the Government than is necessary. The public costs of insuring a viable Penn Central within private enterprise—along the lines we have suggested in this testimony and elaborated upon in our reports to the court—would be substantially less. A transfer of ownership of the roadbed to the Government would, by itself, leave the capital needs of the system untouched. Required expenditures by the Government amounting to a great deal more than the \$600 million to \$800 million earlier mentioned as a necessary figure for Government support would still have to be made.

Obviously, the best solution for the Penn Central problem is one which addresses itself to the long term and prevents the recurring crises that have occurred in the last 3 years. However, immediate measures are also necessary. We agree with the Interstate Commerce Commission that financial assistance, on an interim basis, will be needed while the restructuring of the system is being achieved. As the Commission observed, sums will have to be provided to assure that "creditors' rights are not constitutionally impaired by a continuing cash drain."

APPLICATION TO NORTHEAST

While Penn Central is our responsibility, we recognize that this committee is concerned with the other bankrupt railroads in the northeast. The proposals of the Department of Transportation and of the Interstate Commerce Commission deal with the problem of the northeast as a whole. Even without detailed information with respect to these other carriers, we respectfully suggest that the proposals made with regard to Penn Central can be extended to the entire northeast. At the risk of some repetition, they are, as applied to the regional problem, as follows:

1. It is not feasible to construct a core railroad system which must assume both the costs of deferred maintenance and the costs of labor protection, nor is it feasible to impose the labor protection costs on the bankrupt estates. It is, in our judgment, particularly equitable that the costs of protecting those employees whose services would be unnecessary to any new core railroad or railroads—or to the continuation of subsidized passenger service or subsidized freight lines—should be assumed by the Federal Government. A retraining program under the auspices of the Department of Labor could significantly reduce the total costs.

We believe that only in that way can the resolution of the surplus labor problem be premised, as it should be, on human factors rather than on legal technicalities.

First, the legal rights of employees vary with the railroad involved and, indeed, are different among employees on the same railroad. Yet, the need to afford some security and retraining opportunity is not limited to employees who contracted in the past for job protection. Second, the legal rights of employees are not clear. Lengthy litigation would ensue, during which these men and women would receive no payment. In addition, it is doubtful that any of the bankrupt estates

would be able to honor claims in cash even if legal rights in favor of the employees could be established. The reorganization process is usually a lengthy one in which creditors with substantial claims receive a new security rather than cash in discharge of their claims. In sum, neither the time problem nor the traditional method of payment is conducive to handling employees' claims solely on a "legal rights" basis.

2. Any proposal for a core railroad must recognize the need for speedy action on the elimination of uneconomic freight lines. It would be acceptable, however, if service could be terminated forthwith, leaving abandonment to follow with reasonable speed thereafter if shipper groups or local authorities fail to support the service.

3. Any proposal for a core railroad must provide means by which it can be relieved of all uncompensated passenger service.

4. Any proposal for a core railroad must provide the availability of such sums as are immediately as well as later necessary to modernize and upgrade the system. Viability, in other words, is not solely a function of increasing the density of traffic on fewer miles of rail but of providing a speedy and reliable rail system which can offer effective, modern, competitive service.

5. Any proposal for a core railroad must recognize that the characteristics of the railroad industry impose requirements as to earning power beyond simply support of a capital structure and long-term debt. The enterprise must also be financially equipped to deal with:

(a) The burden of charges for transportation equipment, leased line rental, rent for nontransportation equipment, and real estate taxes;

(b) The need for initial working capital and working capital to accommodate seasonal characteristics;

(c) The need to finance additions, betterments, and replacements before either the cost may be capitalized on a permanent basis or the earnings contemplated to be produced from the improvement materialize;

(d) The need for flexibility to meet intermodal competition through creation of new facilities or acquisition or construction of special purpose equipment;

(e) The need for earning power required to discharge maturing obligations or to establish acceptability in the marketplace for refunding;

(f) The need for technological upgrading of plant and equipment over the long run; and

(g) The need for a dividend policy sufficiently attractive to serve as a foundation for an equity component of the capital structure and to provide the marketplace with the assurance of financial worth and stability.

We have examined the various proposals which have been made with respect to the Northeast and, in our judgment, the general principles advanced by the Interstate Commerce Commission more nearly than any other would produce a viable long-term solution. That plan recognizes the emergency which now exists as well as the need for temporary financing in order to gain the time necessary to do the best possible job of restructuring the existing system. It recognizes that Government is necessary to modernize and upgrade the reduced system that will emerge and that the costs of labor protection

are such that they should not be imposed on the railroads alone. And it provides a basis, through temporary financial contributions to local governments, for resolving the ultimate fate of branch lines which cannot pay their own way and are not included in the new core system.

PROPOSED MODIFICATIONS

We would, therefore, recommend to the committee that it give primary consideration to the Interstate Commerce Commission proposal but that it also consider the following modifications or additions:

1. There should be specific provision for dealing with the passenger problem. As we have said, the reduced system must not be required to provide a subsidy to passenger services out of its freight revenues. Moreover, even in the context of a restructured Northeast rail system, there may well be sound reason to have a separate Northeast passenger corridor owned by the Government.

2. The provision for dealing with the cost of labor protection is admittedly incomplete. These costs which are essentially the social costs of the restructuring of the present system, are a proper public responsibility.

3. We believe that the ultimate responsibility for the route and facility selection would be more appropriately lodged in an independent agency specially created to discharge that task, under stringent time restrictions and with authority to employ the necessary expert assistance. The long experience of the Commission with the rail system and with the consequences to the public welfare of alternative solutions, must be made fully available, but the cumbersome, time-consuming procedures that are required of this agency would make it difficult or impossible to dispose of the many problems within an allowable time frame.

4. The purpose of the 3-year lease to the Federal Government is expressly stated by the Commission to be prevention of further erosion of the bankrupt estates while a permanent solution can be worked out. We agree with that essential objective. But in setting standards for the computation of the rent payable under the leases, the bill appears to omit items which are critical components of the ongoing erosion. Clearly, the trustees would be permitted by the court to enter into a lease only if the rental payments would in fact be adequate to terminate the erosion.

5. H.R. 6591, section 201(f), provides that the rental payments are ultimately to be regarded as a repayable Government loan to the bankrupt railroads. While the loan would be lower in priority to the liens of secured creditors, junior claimants—such as persons injured prior to bankruptcy by the operation of trains—also have constitutional rights, and the loan feature of H.R. 6591 means that the bill would be ineffective in stemming erosion as to them. We believe the court would not permit the trustees to enter into a lease on those terms.

6. The committee should consider whether it favors one restructured railroad or several. On hindsight, the merger of the Pennsylvania and the New York Central may not have been the best alignment of those roads. However, it is now, after great turmoil from labor, shipper and management viewpoints, serving as an effective trunkline railroad. We see real disadvantage in dismembering the enterprise with all the

additional turmoil that such a dismemberment would entail. Rather, we would suggest that experience, beginning with the New Haven case in 1961, has demonstrated that effective competitive service cannot be insured by internecine warfare among marginal or bankrupt terminal railroads.

On the other hand, competition can be preserved if the railroads serving this area are supported by strong trunkline carriers. This objective could be met in a northeast system of three trunklines: a "core" system emerging essentially from the present Penn Central; a Norfolk & Western system absorbing the viable parts of the lines of the Erie & Lackawanna, the Delaware & Hudson, and the Boston & Maine; and a C. & O.-B. & O. system in which was included the viable lines of at least the Reading and the Central of New Jersey. The suggested extensions of both the N. & W. and the C. & O.-B. & O. systems would realistically reflect past and present competitive alignments and, in large part, prebankruptcy ownership affiliations. The solvent trunkline carriers, and not the bankrupt terminal operators that are linked to them, would determine the sort of rail competition that would emerge.

The solvent trunkline carriers might not find it in their interests now to include their so-called satellite systems. In that event the best solution is probably the designation of a single core, including segments of all the bankrupt roads, to insure that rail service will be continued in this important region. In order to be economic, that core would have to be linked to a trunkline system based upon the Penn Central. This solution would admittedly result in a single-carrier service in an area extending roughly from southern New England to the northern tier of the Middle Atlantic States. Single-carrier service could introduce many efficiencies.

More importantly, it would hold greater promise for continued and improved service in this area than the present balkanized situation can ever offer. If this solution is compelled by the unwillingness of the N. & W. and C. & O.-B. & O. now to absorb their satellite systems, they should not be heard to protest over the resulting loss of competition, since that would be entirely a result of their own decision.

If a three-system Northeast proves impossible because of the unwillingness of the N. & W. and C. & O.-B. & O. to participate, and if the Congress is unwilling to proceed toward establishment of a single economic core for that region, then we believe that the best solution is the creation of the Penn Central viable core through the assistance we have already described. This would insure efficient continued rail service to at least large portions of the Northeast. The other bankrupt roads might then be rehabilitated in other ways: Some of them through income-based reorganizations, as the trustees of the Erie Lackawanna believe possible; some by local arrangements or sales like that contemplated between the B. & M. and the State of Massachusetts; and some, at least for a time, by continued operation on a bankruptcy basis. There is reason for skepticism as to whether such ad hoc remedies can insure healthy competition and adequate service in the Northeast over the long term.

We have other less important, but substantial, questions and comments about the ICC proposal. If the committee elects to follow that route, we would expect to work with the staff in refining the details of the legislation.

PRIVATE ENTERPRISE CONSIDERATIONS

One final matter. The committee should be aware that what we have been discussing is a solution to the problem of Penn Central and of the rail system in the Northeast that seeks the greatest practicable amount of private enterprise and capital and a minimum of Federal involvement limited to social costs and support of services which cannot be privately financed.

We prefer this approach, maximizing as it does the disciplines and incentives of private enterprise ownership and operation. We recognize, however, that from our vantage point as trustees we are not in a position to judge whether, in view of regional economics, environmental, social and energy-consumption factors, and the like, the Northeastern States—and ultimately the entire country—should have a rail freight system supported solely by freight rates and local support contracts on branch lines. There is general agreement, for instance, that commutation and intercity rail passenger service is not limited to that which can be supported by the fare box, and often requires some general public support for a variety of economic, environmental and social reasons.

If the Congress should conclude that rail freight service should not be limited to that which can be directly self-supporting, it must then consider a whole range of alternatives to the basically private enterprise proposal we have supported.

If you so conclude, we have two major responsibilities.

First, and most important, is to insist that any solution must involve just and proper compensation to the owners of the Penn Central estate. This is not only a requirement rooted in those principles of fairness which the Constitution embodies, it is also a reflection that there is a public interest in protecting investor confidence in regulated industries.

Second, the Government may decide to structure the essential Northeastern railroad system basically along lines other than that of viability through internal self-support. In that event, we would urge that the committee not ignore the benefits of retaining as substantial an element of private enterprise participation as is practicable. Private, rather than governmental, operation over a governmentally supported infrastructure has been the normal American solution to the problem of our airways, highways and waterways. We urge you not to discard more than absolutely necessary the clear advantages of private enterprise.

Mr. Chairman, before concluding, sir, I would like to read another very brief statement, only a page and a half, which contains a suggested course of procedure here. This has to do with the nature of erosion and the problem created by the erosion in our case, in the case of Northeast railroads.

There is general agreement that the continued operation of several Northeast bankrupt railroads is imminently threatened unless there is a change in the status quo. The threat comes from two sources:

1. Cash flow is so marginal that a disruption of service for lack of operating cash is a constant possibility.

2. Constitutional requirements present continuing and unabated erosion of the owner's rights solely for the purpose of continuing service to the public.

At the same time, a complete consensus has not yet formed over the precise solution to meet the Northeast rail crisis. It seems unlikely that that can occur in the immediate short range, nor is it clear what precise costs would have to be met to check unconstitutional erosion.

Before the Congress can make an appropriate decision, we believe that it, as well as all of the parties in interest involved, should have the benefit of expert and independent consideration, all within the time limitations that the situation requires.

Accordingly, we would be prepared to recommend to our court that the timetable it has set be altered to permit the following:

1. A 60-day interim period during which the ICC would determine on a full record and with notice and opportunity to be heard, what would be necessary to stem erosion for 1 year and thus to sustain operations on a constitutionally permissible basis, with a provision that the amounts found necessary would be retroactive to the time the authorizing legislation is enacted.

2. During the 60-day period, the designation of a system and the other measures designed to implement a long-range solution would be instituted along the principles set out in the ICC report.

That concludes our statement, Mr. Chairman.

[Testimony resumes on p. 275.]

[The attachments referred to follow:]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In the Matter of	:	In Proceedings for the
	:	Reorganization of a
PENN CENTRAL TRANSPORTATION	:	Railroad
COMPANY,	:	
	:	
Debtor	:	No. 70-347

TRUSTEES' INTERIM REPORT OF JANUARY 1, 1973

In their Report of April 1, 1972, the Trustees stated that they would, on January 1, 1973, discuss progress made in securing full compensation for Penn Central's passenger service, both intercity and commuter. That aspect of their reorganization planning is detailed in Part II of this report.

The Trustees have also stated that if they concluded that the reorganization course which they proposed in their April 1, 1972 Plan for Reorganization required a material change they would promptly so advise the Court and the Interstate Commerce Commission. Such advice must now be given.

The Trustees have concluded that without government financial assistance for improvement of the railroad, a reorganization of Penn Central cannot be achieved in 1976, as they had considered possible.

The extent of assistance needed, as well as the forms of assistance which the Trustees will recommend, will be the subject of further advice to the Court, and the Government, within a matter of weeks. The purpose of the assistance would be to improve Penn Central's plant and provide more serviceable equipment in order that the projected volume increase in traffic — upon which the reorganization depends — can in fact be realized. Otherwise stated, without such financial help, one of the four prime conditions to reorganization — an increasing volume of freight traffic — cannot be met.

If this support is forthcoming promptly, the Trustees believe that Penn Central can be successfully reorganized on a private-income basis by 1976. This belief of course postulates success in the attainment of the other three conditions to viability which they have specified in their earlier reports — the elimination of the burdens of unnecessary employees, uneconomic freight lines and uncompensated passenger service. On each of these three fronts, the Trustees have made some progress, and they still believe that these conditions to viability can be realized. The need for financial assistance does not stem from an anticipation of failure in these respects.

The assistance is required, rather, to make possible the attainment of the fourth condition to viability — an increasing volume of traffic. The problem lies basically in the timing of such relief and in the growing awareness of the large amount of expenditures necessary to bring the railroad to a first-rate physical condition. The more aggressively Penn Central has taken leadership in the piggyback field, the more evident have become the inadequacies of its plant and the extent of its under-maintenance over many years.

I

THE NEED FOR PROMPT GOVERNMENT ASSISTANCE

1. The Background.

Penn Central's current position and prospects should be related to the magnitude of the problem existing at the time of bankruptcy. Management has accomplished a substantial achievement thus far, for example, in meeting some \$700 million in increased wages alone since reorganization. This has required a careful and conscientious husbanding of cash while at the same time striking progress has been made in improving Penn Central's railroad service to shippers and expanding its share of the eastern rail market.

The Trustees' Report on Reorganization Planning of February 15, 1972 predicated a private-income-based reorganization on two factors:

(1) "attainment of the projections . . . made regarding the volume of traffic and freight revenues which can be reasonably forecast for Penn Central during the next five years . . . ;

(2) "accomplishment of three basic changes in the Penn Central situation which will require action beyond the sole competence of the management, the Trustees, or this Court: rationalization of the Penn Central plant, removal of unnecessary labor costs, and full compensation for continuing passenger service losses."

In their April 1, 1972 Plan for Reorganization, the Trustees also pointed out that, in order to realize the growth in traffic volume essential to successful reorganization, Penn Central must

"penetrate that enormous transportation market which connects the great industrial centers — a market with hauls between 300 and 700 miles which is dominated by highway carriage. Penn Central, with much to learn in offering the right kind of service and pricing it correctly, has already begun the attempt to penetrate it. The objective is to furnish a cheaper 'highway,' and to persuade all of the different categories of highway freight users, including regulated motor carriers, to take full advantage of it. Upon the outcome of this undertaking may depend more than upon any other condition the long-term viability of Penn Central and the other railroads in the northeastern states."

The Trustees noted in their February 15, 1972 Report that not only was attainment of the conditions essential, but that a "serious time factor" was also involved because of the deferral of administrative claims, such as real estate taxes, and the imposition of new priority claims, such as the Trustees' Certificates. A material delay in attainment of the conditions would pose a risk of "unconscionable and possibly unconstitutional erosion of the Debtor's estate in the meantime."

The Trustees' April 1, 1972 Plan for Reorganization incorporated these conditions and caveats. The basis for the plan was attainment of the three conditions and realization of traffic projections. The Plan was to become effective after a year in which all administrative claims other than Trustees' Certificates should have been substantially discharged (thus arresting erosion) and the Debtor should have earned income available for fixed charges not materially less than \$275 million. At that time, the Trustees considered the prospect reasonable that this would occur by 1976.

The "serious time factor" which the Trustees underscored in February 1972 now proves critical. Delay in achieving accomplishment of the conditions essential to reorganization has so gravely increased high-priority claims as to make them a serious factor in managing Penn Central's affairs. Even more importantly, delay has so impaired Penn Central's cash position that it has been, and will be, unable to make the expenditures necessary to achieve the increased traffic volumes the Trustees had reasonably anticipated. It has now become apparent that the increases in traffic volume vital to future earning power require higher levels of service which can only follow from a program, substantially more extensive than the Trustees have previously anticipated, of plant maintenance, of capital replacement and improvement, and of equipment repair and acquisition. In short, without external assistance, the Penn Central rail system will not improve. The loss of the opportunities for increased traffic which arise from high service standards will ultimately result in a vicious circle of cash shortage, inadequate plant maintenance and rehabilitation, decreasing equipment supply, and stagnant or even again-decreasing traffic levels.

A. Traffic and revenues.

The 1972 traffic figures, as nearly as they can now be estimated, represent a good beginning in the direction of the increasing volume of traffic projected by Temple, Barker & Sloane. For the first time in some years they show an increase in traffic over the preceding year. Nonetheless, the increase will not be as great as the TBS projections indicated.

Penn Central's service has improved enormously since bankruptcy, as is demonstrated by the many favorable comments from shippers and the increase in Penn Central's share of rail traffic in the northeastern United States. But in order to make real

headway in competition with other modes of transportation, further service improvements are required, and these can come only with greater plant rehabilitation and higher standards of maintenance than are possible under Penn Central's limited cash flow. Because of cash shortage, Penn Central was unable in 1970, 1971 and 1972 to sustain an adequate level of railroad expenditures, and will be unable to do so in 1973. Specifically, cash is needed for new and rebuilt equipment, and for a beefed-up program of roadway improvements. The Trustees do not see how all of these funds can be found from internal sources, even if it were practicable to continue deferring payment of high-priority claims, particularly real estate taxes.

The competition of trucks using publicly provided rights of way — the Interstate Highway System — leaves Penn Central no alternative but to maintain and improve the plant so that it can provide the levels of speed and reliability of service which shippers are demanding today. For the longer hauls the cost advantage is with the railroad, but such an advantage is not fully effective unless and until it can be supported by high service standards. Moreover, as service improves there is more justification for higher freight rates which otherwise might prove self-defeating.

Apart from traffic volume, the Trustees have also been required to reconsider their revenue forecasts — their expectation that rate increases would supplement growth in traffic volume in offsetting, with some time lag, cost increases for labor, materials and supplies. The recent rate increase granted by the Interstate Commerce Commission was less than requested. The Trustees' hope for timely industry concurrence in rate matters and prompt ICC action — admittedly based on a change from past practices but justified by the emergency conditions in the Northeast — has not thus far materialized. It is ironic, too, that, despite the fact that the rail mode of transport has substantial environmental benefits, the rate increases needed to permit the railroads to continue to provide such transport have been objected to, and those granted substantially delayed, by environmental groups.

B. Elimination of uneconomic branch lines.

The Trustees have had on file at the ICC applications to eliminate over 3000 miles of uneconomic lines. Fewer than 800 miles have been approved for abandonment. At the current rate of approvals, reduction of the present Penn Central system to the 15,000-mile maximum upon which the Trustees' reorganization planning has proceeded cannot be attained by 1976.

The Trustees have concluded that the necessary reduction in the system can be accomplished only through a preliminary separate step in the plan of reorganization, which will hopefully permit both analysis of system-wide results in a reorganization context and much more expeditious decision, by the Court if necessary. An appropriate submission to that end is being prepared.

Thus, while a streamlining of the plant remains feasible by 1976, there has been no substantial relief as yet. This delay has resulted in a draining of cash to support "loser" lines, the diversion of limited resources from much-needed improvements on the lines which do have projected growth potential, and the postponement of the operating benefits flowing from the use of a rationalized plant with higher traffic density.

C. Elimination of unnecessary labor expenses.

Since bankruptcy, Penn Central management has made very substantial progress in eliminating unnecessary non-operating employees. Total employment has been reduced by more than 10,000. It is unlikely that any substantial further reductions of force in non-operating jobs can be made under present conditions without counterproductive loss of efficiency.

There has also been some progress in eliminating unnecessary operating employees. The long-standing fireman issue was finally resolved favorably on a national basis in July 1972. Full crew laws in the states in which Penn Central operates have been repealed or modified. However, reductions in the number of operating employees on the payroll can be made only as attrition occurs, and the full savings will not be realized until 1979.

Relief on the important crew costs issue has thus far been limited to 285 trainman positions eliminated through attrition as a result of the Interim Agreement signed with the

United Transportation Union in July 1972. In view of an impasse in negotiations, the Trustees have been authorized and instructed by the Court to promulgate their June 1971 notice to eliminate, by attrition, excess crew members. They did so on December 28, 1972, effective January 12, 1973.

The experience derived from the operations with the 285 reduced crews fully supports the Trustees' contention that their position is correct, and that their reorganization planning properly assumes that relief from these excess labor costs will be forthcoming. At the same time, the Trustees recognize that interim costs of labor protection and reliance on attrition postpone a significant part of the eventual full benefits of labor rationalization beyond 1976. These factors, plus the limited nature of the relief realized in 1972, have deprived, and will continue to deprive, the estate of funds which could otherwise have been devoted to necessary plant maintenance and improvement.

D. Passenger Service.

The delays in achieving an elimination of the burden of passenger service are set out in detail below. The Trustees recognize that full relief from this burden must be obtained promptly, and they remain hopeful that this can be accomplished by fully compensatory contracts with commutation and inter-city authorities. However, because of the importance of the issue, the Trustees will shortly request, as a preliminary and separate step in the plan of reorganization, authority to terminate all passenger service not covered by support contracts.

Again, the delay in obtaining this relief has denied the estate large sums which would otherwise have been available and which cannot now be recaptured.

E. Growth in priority claims against the estate.

Deprived of an adequate cash flow, the Penn Central estate has accumulated substantial priority claims ahead of all pre-bankruptcy interests. Conservatively estimated, these priority claims already aggregate at least \$300 million. On a status quo assumption, another \$100 million would be added in 1973. As a result, the value of the estate has already been substantially eroded and the Trustees are presently unable to prevent continuing erosion. In addition to these items, there is a priority charge of some \$200 million a year for interest and amortization of equipment debt and equipment lease rentals which must continue to be serviced out of future cash resources whether or not such charges are earned.

There is, simply, not enough cash to cope with continuing claims and to embark upon the capital improvement programs which would permit a continuation of service improvements. Not only is the ability to preserve earning power jeopardized, but Penn Central's essential public services cannot be sustained on this basis.

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The Trustees conclude that further progress can reasonably be expected in the direction of satisfying the conditions to reorganization, but that the evidence does not support the hope that such progress will be fast enough to prevent the erosion of the estate in which claimants have undeniable constitutional rights, and the ultimate deterioration of the property. To make the railroad viable and healthy within a time acceptable from the standpoint of either the public interest or the interests of claimants requires external support.

The root problem is that for the short term Penn Central cannot generate enough cash or credit, even on reasonable assumptions of progress, to make the capital investments and to provide the maintenance necessary to attract and to carry the increased traffic volume which has been forecast and which is so critical to successful reorganization. For example, despite better car utilization, studies for 1973 based on Penn Central's own resources contemplate, out of cash necessity, the retirement of more freight cars (and carrying capacity) than new freight cars acquired and a higher unserviceable ratio — in the face of projected traffic increases over the same period. As another example, on some important main lines, as well as branch lines, Penn Central continues to have "slow orders"

which increase running times between terminals. The expense of bringing track up to maintenance levels permitting service in keeping with operating schedules, much less the faster service which effective competition requires, is greatly increased by the new Federal standards of track maintenance.

In summary, accumulating experience leads inescapably to the judgment that the Penn Central cannot, within an acceptable time, be made viable under the status quo. Vitally needed, in terms of both better service to the public and acceptable treatment of claimants, is a substantial upgrading of plant and equipment for which the railroad cannot generate the cash or credit internally.

One major question is how much financial assistance for improvements in plant and equipment is necessary. Another is what assurance the Trustees, or anyone else, can give that Penn Central will be self-supporting and able to generate its own capital once such expenditures are made. The Trustees do not underestimate the importance of these questions to the public, to the Government, and to the owners of the estate, and the difficulty of ascertaining reliable answers to them.

As to the first question, the Trustees expect to be able to give the Court their answer, with supporting reasons, in a few weeks. As to the latter, the answer lies largely in the cooperation of those with whom the Trustees are dealing in their efforts to achieve the essential conditions to viability, and also with Penn Central in its effort to develop and exercise greater competitive capability than in the past.

The Trustees point out, however, that the alternative — continuing deterioration of rail transportation in the northeast — cannot be regarded by anyone as in the national interest. The continued availability to the public of rail freight service as an effective competitive alternative or supplement to other modes of transportation is important for an economical and efficient flow of commerce in the nation. In a region already substantially congested, the evident environmental advantages of rail freight service cannot be ignored. Assistance to Penn Central tied to better maintenance and adequate capital replacements and improvements provides immediate benefits to the public.

Such temporary assistance is aimed at making a private-income-based reorganization feasible, in which event it will not only have provided shippers and the public with improved service at the earliest date, but will have saved the public from the larger burdens and problems of increased Federal involvement via nationalization.

The Trustees propose to determine and to announce as quickly as possible the minimum amount of interim public assistance which should have a reasonable chance of turning Penn Central around and making it self-supporting and capable of an earnings-based reorganization. This will be done prior to the April 1, 1973 plan of reorganization, which will then be based upon both the expectation of obtaining such requested public assistance or its reasonable equivalent within the necessary time, and attaining an adequate pace in the achievement of the other preconditions of viability.

II

PROGRESS TOWARD ADEQUATE COMPENSATION FOR PASSENGER SERVICE

A. The Trustees' Position

The Trustees have previously stated that Penn Central desires to provide passenger service but cannot be compelled to do so unless it is properly compensated. Penn Central's rail passenger service provides significant economic and environmental benefits to the public, but does not support itself from the fare box. As is apparent from the prior discussion in this Report, Penn Central cannot justify continuing to make up the difference. Accordingly, the Trustees have no real choice but to propose that passenger service be discontinued unless the public authorities desiring public service pay adequate compensation.

Up to the present, the conventional approach by public authorities to compensation for rail passenger service has been limited to reimbursement for *avoidable costs* — that is, the marginal costs for passenger operation on a plant basically geared to freight service.

Whatever merit the avoidable cost approach may have to relatively infrequent passenger service over a freight railroad presumed to be self-supporting, the premises of the avoidable-cost approach to sharing of costs are utterly inapplicable to concentrated, high-volume commuter traffic or high-volume inter-city passenger traffic over lines which are primarily passenger-oriented. In such circumstances, it might even be said that freight service is marginal and that the freight service share of costs should be limited to avoidable costs. In such circumstances, anything less than a full sharing by passenger authorities of common costs and appropriate compensation or other recognition of assets dedicated to passenger service is an unfair burden. The result is that the entire railroad enterprise suffers.

Accordingly, the Penn Central staff has prepared a cost study of the Northeastern corridor with the assistance of Dr. Dwight R. Ladd, Deleuw, Cather & Co., and Haskins & Sells, and has also prepared separate studies of the Philadelphia, northern New Jersey and Boston commutation services with the assistance of Klauder & Associates. The Trustees have also proposed to local commuter authorities, and to Amtrak in respect of the Northeastern corridor, sales or leases of land, track and other assets dedicated to passenger service or other acceptable recognition of investment dedicated to passenger service.

B. The Response of Public Authorities

No public authority has rejected the Trustees' approach to passenger compensation, but affirmative responses or implementation of affirmative responses have been disappointingly slow.

Amtrak has been on notice of the Trustees' position in regard to compensation as that position has been formulated and refined. Amtrak representatives have participated in a review of the methodology of the Penn Central studies undertaken by Deleuw, Cather & Co. and Haskins & Sells.

In November, Amtrak was provided with the detailed results of the developed method of cost sharing on the basis of operations actually conducted in April, 1972. In early December, Amtrak was provided with the detailed results of such cost sharing for all operations actually conducted in the Northeastern corridor in the first eight months of 1972. Amtrak has also been provided with a detailed breakdown of corridor assets apportioned to inter-city passenger, commuter and freight services together with preliminary estimations of value to serve as yardsticks for approaching sale, lease or other appropriate recognition of investment for assets dedicated to passenger service.

To date Amtrak has yet to accept the Trustees' proposals, to reject them, or to make a counter proposal. This situation may be explainable in part by the time it has taken the Trustees' staff to assemble and to provide to Amtrak the fully developed approach to cost sharing together with detailed figures of actual operations from which they could appraise the dollar implication of such an approach.

The Northeast Corridor Project currently under study in the Department of Transportation may be another complicating factor. However, the Trustees must observe that Penn Central cannot long continue inter-city passenger service on the present basis and that Amtrak's inability to make any affirmative response to date has already materially damaged Penn Central's prospects for viability and reorganization.

In regard to Philadelphia commuter service for Southeastern Pennsylvania Transportation Authority (SEPTA), the record is one of strong progress by SEPTA towards an agreement in principle, but inability to date on the part of SEPTA to implement the agreement. In September, 1972, the Trustees entered into a memorandum of understanding with SEPTA contemplating a new long-term lease and operating agreement under which SEPTA would accept carrier responsibility for the service (and thus full costs of operation); Penn Central's investment in SEPTA land and facilities would be given recognition by free freight trackage rights and by a share of the proceeds of future air rights development. In addition, two three-month extensions of the agreement in effect June 30, 1972 were entered into by the Trustees and SEPTA. The second, expiring December 31, 1972, provided for a higher basis of compensation than in the previous fiscal year.

SEPTA representatives have assured the Trustees that they are making every effort to achieve the necessary support for legislation to implement the new relationship established in the memorandum of understanding. The Trustees can only observe that they cannot recommend continuation of passenger service in any area without adequate public support.

Progress with other public authorities having responsibility for commuter service continues to be encouraging. The previously reported sale of substantial segments of the rights-of-way in Massachusetts to the Commonwealth pursuant to Order No. 867 herein has now received an Urban Mass Transit Administration loan award for financing and is expected to be consummated by January 30. On the basis of the announced transit policy of the Governor of Massachusetts and discussions with the Massachusetts Bay Transportation Authority, the Trustees have reason to expect that in 1973 all significant commuter service in that area will be under long-term fully compensatory agreements in line with public acquisition or recognition of investment in the rights-of-way.

Long-term arrangements with MTA (Metropolitan Transportation Authority) have already been concluded with respect to the railroad's Hudson and Harlem service in New York State. Also concluded since the Trustees were appointed were contracts with MTA and CTA (Connecticut Transportation Authority) for the commuter service on the lines of the former New Haven Railroad linking New York City to New York and Connecticut suburbs.

Discussions with MTA concerning public acquisition of the Penn Station passenger complex in New York City and adjacent supporting facilities continue at what appears to be an acceptable pace. An agreement concerning a lease pursuant to which significant public contribution to rehabilitation of the Newark Passenger Station would be made is before the Court for approval. In recent discussions, the New Jersey Department of Transportation appeared sympathetic to the principle of full cost compensation for commuter service and appropriate recognition of investment. Legislation to permit this was enacted during 1972 by the New Jersey Legislature. Progress towards agreement is not satisfactory, however, and may force the Trustees to seek approval of discontinuance of the New Jersey commuter service.

Discussions are underway or contemplated in the near future with other public authorities as to the future of other, presently unsupported, commuter services.

The development of information adequate to support and to quantify the Trustees' request for adequate compensation for the passenger services Penn Central provides has proved to be a voluminous and time-consuming task. The analysis of Penn Central proposals by the various public authorities has also involved substantial effort and time. However, time is running out. Penn Central's prospects for viability and reorganization have already been materially damaged by inadequate compensation for passenger service. In the judgment of the Trustees, the present situation cannot be permitted to continue.

Accordingly, in the near future, the Trustees will initiate procedures for the immediate discontinuance of all passenger service not presently covered by support contracts. They will also seek the discontinuance, after a reasonable interval, of passenger service in which compensation is not in reasonable conformity with the principles outlined above.

Respectfully submitted,

**GEORGE P. BAKER, RICHARD C. BOND
AND JERVIS LANGDON, JR., TRUSTEES
OF THE PROPERTY OF PENN CENTRAL
TRANSPORTATION COMPANY, DEBTOR**

By /s/ JERVIS LANGDON, Jr.

/s/ ROBERT W. BLANCHETTE
Robert W. Blanchette
Counsel for Trustees

/s/ COVINGTON & BURLING
Covington & Burling
Special Counsel for Trustees

Dated: January 2, 1973

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In the Matter of	:	In Proceedings for the
	:	Reorganization of a
PENN CENTRAL TRANSPORTATION	:	Railroad
COMPANY,	:	
Debtor	:	No. 70-347

TRUSTEES INTERIM REPORT OF FEBRUARY 1, 1973

In their Report of January 1, 1973, the Trustees reached the conclusion "that without government financial assistance for improvement of the railroad, a reorganization of Penn Central cannot be achieved in 1976, as they had considered possible."

The Trustees also said that "the extent of assistance needed, as well as the forms of assistance which the Trustees will recommend, will be the subject of further advice to the Court, and the Government, within a matter of weeks."

The further advice so anticipated is set forth in this Report.

The Trustees wish to emphasize at this point that if shippers, communities, organized labor, and federal, state and local governments affected had previously been prepared, or were now prepared, to permit Penn Central to shrink the system to the size which is most economically justified (the 11,000 mile core railroad described in the Trustees' Interim Report of October 1, 1972), to pay only the employees needed therefor and to furnish only fully compensated passenger service, Penn Central would have a good prospect of viability without any other government financial assistance. In such event, the Trustees believe there would be a basis for enough investor confidence that the necessary funds described herein for improvement of the railroad's service could be raised from operations and from private sources without unacceptable erosion or dilution of the claims of Penn Central pre-bankruptcy claimants.

One way of measuring the public burden that Penn Central carries is to compare the results of operation of the present 20,000 mile railroad (with gradual abandonments down to 15,000 miles) with the results of operation of an immediate 11,000 mile railroad as outlined in the Trustees' Interim Report of October 1, 1972 and summarized in Appendix A hereto. The projected differences, as shown in the table below, are extraordinary.

Projected Net Railway Operating Income (Millions)

Immediate 11,000 Mile Railroad		Present Railroad	Difference
1973	\$ 59.0	(157.2)	\$ 216.2
1974	137.6	(104.8)	242.4
1975	225.1	(56.5)	281.6
1976	299.2	(1.1)	300.3
		Total thru 1976	\$1,040.5

The Trustees would emphasize that they operate a 20,000 mile rather than the optimum 11,000 mile railroad solely because public authorities are reluctant to permit a reduction in surplus plant, and because labor would expect large labor protection payments, amounting to \$774.1 million through 1976 alone, if Penn Central were free promptly to move to a railroad of 11,000 miles.

Strong arguments can and will be made that immediate action to relieve Penn Central of the foregoing excessive service and labor obligations is the best course to follow. The government financial assistance described herein, to any extent and in any form, must be regarded as an alternative — the price of the present inability of Penn Central and other non-viable railroads to withdraw from public service that produces only losses, to dispense with surplus employees, and to confine themselves to those operations where, in serving the public, profits can be developed as the result of superior service.

I

ESSENTIAL EXPENDITURES

In prior reports the Trustees have pointed to the improvements in Penn Central's freight service that have come since bankruptcy. Car supply has been more nearly adequate because of better utilization of equipment and the acquisition of new cars. Many more trains have been added. There has been a closer adherence to schedules in the operation of fast freight trains. Control of freight loss and damage, while far from satisfactory, has been better. Instead of being deluged with complaints, the new management has received much favorable comment from customers.

In 1972, yearly carloadings turned up over those of the preceding year for the first time since 1964.

But despite this notable progress, the quality of Penn Central service falls short of the standards required in today's competitive transportation market. The availability of faster and more reliable highway carriage puts in serious question the present-day ability of Penn Central to establish the upward trend in its business volume so necessary to future earning power. Only by catching up on maintenance and capital improvements neglected in the past fifteen years can Penn Central be put in a position to provide the high quality of service demanded by an ever-increasing portion of the nation's shippers. The estimated cost of doing this work *over a period of years* is:

\$435 million for additional maintenance of way charges spread over the period 1973-1976, with the understanding that \$200 million more may be necessary after 1976 (see Appendix B);

\$ 45 million for additional maintenance of equipment to insure, by 1976, a bad-order freight-car ratio of not more than 5%;

\$120 million for additional capital expenditures directly related to service improvements and traffic development (see Appendix B).

\$600 million to \$800 million — Total

These sums are the Trustees' best present estimate of what is necessary to permit attainment of a steady increase in traffic volume, as projected in the Trustees' earlier reports. Viability assumes, as before, prompt relief in the other areas which the Trustees have indicated as critical to successful reorganization: elimination of surplus plant and of unnecessary employees (on an attrition basis) and full compensation for all passenger operations.

The Trustees' conclusions as to the extent of the job to be done are essentially a confirmation of the requirements for maintenance stabilization and normalized maintenance projected in the Trustees' Interim Report of October 1, 1972, with some additions resulting from subsequent investigations. The urgency of making such additional expenditures, in the light of changing traffic patterns and Penn Central's inability to make such expenditures without government assistance, is explained below.

In relating these expenditures to Penn Central's viability, it is important to understand the changes that are taking place in transportation, particularly in the Northeast region. For a time after bankruptcy, it proved possible to make substantial improvements in the reliability of freight rail service even in the face of a deteriorating condition of the plant simply by better organization and better management. Not until Penn Central, under present management, recently commenced a dynamic program for increased piggyback traffic and other high-quality freight traffic did it become evident that the railroad in its present state is simply unable to handle the strain of such service. The foregoing, together with additional recent evidence of acceleration in deterioration of the plant, has led the Trustees to the conclusion that continued acceptable public service requires much more additional maintenance and additional investment in the rail plant.

In years gone by, the principal commodities handled in Penn Central's freight service were bituminous coal and traffic related to the steel industry — ore, coke, fluxing stone, and iron and steel. But these commodities have been declining faster than other traffic.

Already many million tons of high-sulphur steam coal have been lost. Comparing tons handled in 1968 (the merger year) and 1972, the figures show:

	Coal, Coke, Ore, Fluxing Stone, Iron and Steel (Tons Handled)	All Others (Tons Handled)
1968	166,009,906	131,348,680
1972 (Est.)	144,350,000	126,050,000
Rate of Decline	13%	4%

Even more striking is the downward revision in the traffic forecasts for these commodities as made by Temple, Barker, and Sloane. As included in the Trustees' Plan for Reorganization dated April 1, 1972, that firm estimated 621.9 million tons of bituminous coal and steel related commodities for the period 1973-1976. Six months later, for inclusion in the Trustees' Interim Report of October 1, 1972, that estimate was lowered to 579.3 million tons — a reduction of 42.6 million tons, equivalent to some \$172 million in revenue.

Certain of the influences bearing on the movement of coal and steel-related commodities, such as the problems of high-sulphur coal and the developing patterns of the steel industry in the East, are completely beyond the control of Penn Central. The Trustees cannot count on these commodities to contribute importantly to volume increases projected earlier in their reorganization planning. On the contrary, such increases, for the most part, must come from other traffic, including high-grade manufactured and miscellaneous commodities which will tend to move over the best-service routes, whether highway or rail. As explained in a recent staff report for the use of the Senate Commerce Committee:

"Looking to the future, there is a good reason to believe that the fate of the railroads will in large measure be determined by the extent to which the industry can gain a greater share of the manufactured goods market. If the railroads are to improve their financial posture and keep up with the rapidly changing character of the economy, more aggressive initiatives aimed at these kinds of markets are called for. Should the industry continue to depend so heavily on the lower valued bulk commodities, it runs the risk of confining itself to traffic that not only yields comparatively little in terms of revenue, but, as noted earlier, possesses less potential for traffic growth. In contrast, manufactured goods offer the railroads the twin prospects of greater returns and growing markets.

"Can the industry move more of this kind of traffic? The answer ultimately reduces to the matter of rail-motor carrier competition since almost all truck traffic is concentrated in the high yield sectors. . . . (T)he railroads now move less than 30 per cent by weight of manufactured goods traffic, while the trucks enjoy about two-thirds of this market. What is particularly striking, however, is that contrary to popular impression, about a third of all truck shipments move 500 miles or more, a distance on which for most shipments (with weight and cube considered) comparative costs should make rail movement superior. The example of how the railroads regained from trucks a significant share of the automobile market stands as evidence that high-rated traffic can be held by or attracted to the railroads. The fact, however, is that for most manufactured goods the rail share of longer-haul shipments is decidedly below the apparent potential."

"As has been true for many years and as is likely to be the case for many years to come, the railroads are heavily oriented to the transportation of bulk commodities. On this traffic yields are relatively low (though not necessarily unprofitable, at least in the sense of coverage of marginal costs) and the rate of growth is likely to continue to be generally slow. If the railroads are to expand and increase their share of intercity transportation they must exploit the potential that lies in the movement of manufactured goods, notably including shipments by TOFC — trailer on flat car — and container. The economies of the situation make this

¹ *The American Railroads: Pasture, Problems, and Prospects*, Staff Analysis for the U. S. Senate Committee, Prepared at the Direction of Hon. Warren G. Magnuson, Chairman, for the Use of Committee on Commerce, United States Senate, August 28, 1972, at page 67.

feasible for many types of movements, taking into account the character of the product, costs, weight, and shipment distance. If, though, the potential is to be converted into reality it will require better service (meaning improved utilization of equipment, notably freight cars), faster turnarounds, reduced terminal and handling times, and a highly flexible marketing approach that more closely relates rates and service to competitive modes of transportation. Among other things this demands a complementary public policy, one that is conducive to innovation."⁹

Obviously, to compete in this changing transportation market with its heavy demand for service of high quality, a railroad with slow tracks and inadequate freight cars can hardly be successful. On certain important parts of its system, Penn Central is such a railroad. At one time this was a railroad with high-speed tracks with many more serviceable freight cars. But over the years freight operating schedules have been lengthened in many areas, and "slow orders" because of track condition have brought further increases in running times. In Appendix B are set forth the new rail, ties, ballast, and surfacing required to put the track structure in more satisfactory operating condition.

Moreover, on the equipment side Penn Central's needs are substantial. Cash shortage has forced curtailment of freight car repair so that the ratio of bad-order equipment to the whole fleet will reach 11 percent by the end of 1973, whereas the ratio should be no more than 5 percent. Penn Central management estimates that to reverse the deterioration of the existing Penn Central equipment fleet and to bring the bad-order ratio back to 5 percent would involve increases in repair expenditures, over those presently budgeted because of cash limitation, of approximately \$45 million during the period 1973-1976. Improving the condition of Penn Central's equipment fleet is just as necessary as the greater track maintenance described above in giving Penn Central the capability of providing high-quality transportation service.

New equipment is also required to serve the same purpose. In the face of Penn Central's decreasing ability to depend on use of rolling stock received in interchange and owned by other railroads and the unacceptability of such continued dependence in the face of a nationwide freight-car shortage, the Trustees estimate that, to carry the increasing traffic projected by Temple, Barker & Sloane for 1976, the railroad will need about 18,000 new freight cars and 609 locomotives, costing about \$569.3 million. While provision has been made for these acquisitions in Penn Central planning, Penn Central's cash shortage and lack of credit under present conditions make the financing of such equipment most difficult and exceedingly expensive.

The terms of the Trustees' sale of the Pennsylvania Company, if approved by the Court, will provide a line of credit for rolling stock acquisitions of up to \$150 million on relatively favorable terms. Accordingly, the line of credit gained as part of the consideration from the sale of Pennsylvania Company will solve part, but not all, of the problem of financing new equipment. In view of the present and anticipated shortage of cash and credit, additional government guaranteed equipment financing is necessary. The Trustees reaffirm their support for the enactment by the present Congress of legislation comparable to H.R. 16281 as considered last year.

Finally, there is a pressing need for capital projects which are also designed to realize the benefits of the stepped-up maintenance program and to permit Penn Central to serve the additional traffic it needs to attract if it is to survive. The program which Penn Central believes to be essential to its future viability is included in Appendix B. Normally, such expenditures are made from earnings. In the case of Penn Central, present operations do not generate sufficient cash to fund these expenditures. Therefore, unless cash is available from outside sources, the entire capital program (except for critical safety projects) will be frustrated; and Penn Central will be able to do no more than in the years since bankruptcy when, despite plans to spend as much as \$75 million in one year, it has had to limit capital outlays to \$18-20 million per year, principally for safety projects. The capital projects necessary if Penn Central is to be capable of offering improved service and attracting increased traffic aggregate \$229.2 million by 1976. Of this amount, \$109.2 million is provided for in current management planning; for the remaining \$120 million, a new

⁹ *Id.* at page 69.

source of funds must be found. These are the projects which, if carried out, will improve Penn Central's ability to provide better service for increasing traffic volumes.

The Trustees regard the foregoing program of stepped-up maintenance, both road and equipment, and increased capital expenditures as vital to Penn Central's reorganization. The increased volume upon which earnings depend will not be attracted unless Penn Central can further upgrade its service. This upgrading depends, in turn, upon an improved railroad plant and more serviceable equipment. In fact, if the Trustees were successful in the complete realization of all other conditions which they have postulated for successful reorganization of a 15,000 mile system — fully compensatory passenger service, and smaller crew consist — but failed to achieve an increasing business volume, there would be no earnings and Penn Central could not be reorganized in the private sector. Appendix C sets forth the figures to support this conclusion. The projected cumulative difference in net railway operating income is nearly \$700 million.

The public benefits, both economic and environmental, of maintaining rail service are not to be underestimated. Continued rail service as an effective and economic alternative to other modes of transportation should hold down transportation costs for the benefit of shippers and the public. Effective rail freight transportation will hold down future highway congestion and pollution to the benefit of all.

In sum, Penn Central to be reorganized must have other sources of funds resulting either from complete relief from excessive service and labor obligations or at least in part from infusion of governmental funds. Otherwise, the standard of service Penn Central must have to compete effectively will not be attained and the increasing traffic levels upon which reorganization depends will not be produced. Moreover, for lack of cash and credit, Penn Central's rail plant and equipment are deteriorating in condition and thus in value at the same time that unpaid real estate taxes and other high-priority obligations are relentlessly piling up.

Because of claims already accrued, neither the non-rail assets of the estate nor further borrowings can be looked to for the cash needs of the railroad. Indeed, with the railroad lacking funds to make it viable, with plant and equipment deteriorating, with tax claims and other post-bankruptcy claims eroding the estate available for pre-bankruptcy claimants, and with unacceptably slow progress in the direction of previously reported conditions for viability, it would be a violation of the constitutional rights of Penn Central claimants to continue Penn Central rail service much longer under the status quo.

Pending adequate governmental action or the alternative cessation of operations, the Trustees will do all within their power to minimize the need for government assistance. Accordingly they must and will insist upon prompt progress toward a satisfactory solution to the crew consist issue and will shortly propose to the Court suspension of freight service on uneconomic lines and suspension of passenger service where support by public authorities is non-existent or inadequate.

II

FORMS OF GOVERNMENT ASSISTANCE

The foregoing program could be carried out in a number of different forms which have quite different consequences as to continuing government involvement and responsibility, as described in the Trustees' Interim Report of October 1, 1972. Major alternatives which appear to the Trustees to be worthy of the most serious discussion are set forth below.

(a) Subsidies until the railroad can become viable

The form of governmental assistance which would hopefully result in the minimum government involvement and responsibility would be a \$600 to \$800 million program of subsidies over a period of years for the purposes described in Part I. The justification for

a subsidy is that the amount required is, after all, substantially less than the burdens imposed on Penn Central by excessive service and labor obligations (see page 1).

Of course, for its protection, the government should have a voice in controlling the uses to which the subsidy payments are put. If the large part of the program that involves increased roadway maintenance were to be provided by the government, it would appropriately be provided subject to requirements that the railroad continue at least the present level of roadway maintenance with internally financed funds. So as not to support wastefully duplicative facilities in the Northeastern railroad system, but without undertaking the burden of deciding once and for all what would be the ultimate shape of the Northeastern railroad system, the government might require a finding by the disbursing authority that the additional roadway maintenance funds and capital improvement funds will not be spent on facilities duplicative of clearly preferable facilities provided by other railroads. There might also be, as to the capital improvement projects, more definitive required approvals by the disbursing authority.

Such a public subsidy contribution, subject to requirements that the funds be spent for purposes providing direct benefits to the public, presents a minimum, and hopefully a temporary, government involvement and responsibility. Alternative forms of carrying out the program may provide the government and the public with greater control, but may present the correlative disadvantages of involving the government with greater responsibility, longer-term commitment and greater government expenditure.

(b) Joint venture involving conveyance of rail plant to public authority, government commitment to maintain and to improve plant, and proportionate sharing of user charges paid by private operating company

If, in providing the subsidy described in the foregoing section, more protection for the government is deemed necessary, a joint venture might be considered. Penn Central would convey the essential roadway to a public or quasi-public authority, and the government would make a commitment to maintain and to improve the plant. The railroad, which would remain as a private operating company, would pay user charges to the authority owning the plant in accordance with a formula related to its volume of activity and its ability to pay. Similarly, Amtrak and local commutation authorities would also compensate the authority on a user basis. The user charges would be divided among the owners of the authority (the government and the Penn Central claimants who contributed the existing plant) in proportion to the value of their respective contributions. The joint venture could contain provisions for termination and for repayment of the government contribution if railroad earnings so permitted.

(c) Government purchase or lease of right of way at fair market value with subsequent Government maintenance and investment, and with operation by private company paying user charges

Another alternative is government acquisition of the right of way, the trains to be operated by a private contract operator. Again, the private operating company would pay user charges. Acquisition could be through either an outright purchase or a long-term lease to insure continuity of the roadway as protection for the government's involvement. This solution is particularly appropriate in the passenger-oriented Northeastern corridor where long-range government plans may require massive capital investment.

This alternative would relieve the railroad of any obligation to maintain and to improve the right of way. In addition, local property taxes, which are a present burden on the rail system, could be eliminated or greatly reduced.

Such a solution would provide not only continued service to the public, but also compensation to claimants against the Penn Central estate. This would make it very expensive, for government expenditures would not end with compensation of the private interests involved, but would extend to the maintenance of the right of way and its

improvement as set forth in Appendix B, subject to recovery in whole or in part through user charges.

This alternative also could contain provisions whereby the government would divest itself of involvement by selling its leasehold or ownership interest to the private sector if the system developed sufficient earnings.

III

CONCLUSIONS

It is clear that the status quo will not permit an income-based reorganization. Indeed, because of the accumulation of losses and unpaid priority charges, a continuation of present operations would do violence to the constitutional prohibition against the using of private property for a public purpose without adequate compensation.

The money required to continue service simply cannot be found from private sources, at least in the next few years, unless Penn Central should be immediately relieved of all excessive service and labor obligations.

The alternatives, therefore, may be simply stated. A substantial public investment in Penn Central's plant will insure continuation of essential operations with adequate and efficient service to the public. A failure to make this investment or to take other adequate actions can only result in a closing of Penn Central's railroad.

The Trustees believe that the plant and equipment investment program described in this Report will result in a viable railroad which can remain in the private sector. It will certainly produce a service which the public interest requires.

Decision as to how the investment is made rests, of course, with the legislative and executive branches of the government. The Trustees do not consider themselves competent to advise as to the political preferences or the political practicality of the various alternatives suggested. They do feel that private management with the profit incentive of private ownership would be best; private management under an incentive contract with ownership of the right of way and track and structures by a mixed public and private authority or a public authority is next best.

Because government ownership *and* operation is a very poor, and unnecessary choice, it is not discussed in this report. World-wide as well as domestic experience in addition to logic dictates this strong conclusion.

The Trustees see their responsibility in this area to be to state these facts along with the amount of government funds necessary to make Penn Central a strong public-service organization. The political process must churn out by which method the infusion is to take place. The choice is up to those who control the national purse strings.

For them it is obviously a very hard choice. Frustration with situations such as the Penn Central presents — present and past — may well lead the government to close its eyes to the vital fact that purchase and operation by the government will cost much more over time than an investment of less money in making possible a viable private "public service" enterprise.

Respectfully submitted,

**GEORGE P. BAKER, RICHARD C. BOND
AND JERVIS LANGDON, JR., TRUSTEES
OF THE PROPERTY OF PENN CENTRAL
TRANSPORTATION COMPANY, DEBTOR.**

By /s/ JERVIS LANGDON, Jr.
One of the Trustees

/s/ ROBERT W. BLANCHETTE
Robert W. Blanchette
Counsel for Trustees

/s/ COVINGTON & BURLING
Covington & Burling
Special Counsel for Trustees

Dated: February 1, 1973

APPENDIX A

COMPARISON
PROJECTED INCOME
1973 - 1976

PRESENT "20,000" MILE SYSTEM VS. 11,000 MILE SYSTEM (FREIGHT ONLY)

(PER BASE PLAN STUDY) ("INSTANT"-VPS II)
(AS REVISED) (10-1-72 REPORT)

Dollars in Millions

() = Loss
Total
1973 - 1976
CumulativeA. Present System

OPERATING REVENUES

	1973	1974	1975	1976	
Freight	\$1,726.2	\$1,874.1	\$2,002.6	\$2,141.1	\$7,744.0
All Other	244.6	252.3	260.4	268.9	1,026.2
Total	1,970.8	2,126.4	2,263.0	2,410.0	8,770.2
(1) Operating Costs *	2,128.0	2,231.2	2,319.5	2,411.1	9,089.8
(3) Net Railway Operating Income	(\$ 157.2)	(\$ 104.8)	(\$ 56.5)	(\$ 1.1)	(\$ 319.6)

B. 11,000 Mile System

(1) Railway Operating Revenue	\$1,618.5	\$1,740.2	\$1,862.5	\$1,971.1	\$7,192.3
(2) Operating Costs **	1,559.5	1,602.6	1,637.4	1,671.9	6,471.4
(3) Net Railway Operating Income	\$ 59.0	\$ 137.6	\$ 225.1	\$ 299.2	\$ 720.9

C. Comparison Projected

Net Railway Operating Income										
(11,000 Mile System - Present	+	\$216.2	+	\$242.4	+	\$281.6	+	\$300.3	+	\$1,040.5
(Line B (3) - Line A 3)										

* Adjusted to include Maintenance Stabilization Program and Normalized Maintenance Increment.

** Excludes Labor Protection Costs; Adjusted to include Maintenance Stabilization, Normalized Maintenance Increment; Accrued Railway Taxes and Net Rents.

APPENDIX B

MAINTENANCE OF WAY
(\$ Millions)

Category	1973	1974	1975	1976	Total 1973-1976
Ties 1/	\$38.8	\$57.9	\$60.8	\$63.8	\$221.3
Welded Rail (New) 1/	32.7	41.9	44.0	46.2	164.8
Welded Rail (Relay) 1/	8.8	11.6	12.2	12.8	45.4
Track Surfacing 1/	10.3	10.8	11.3	11.9	44.3
All other MW	185.3	209.3	215.0	220.3	829.9
Maint. Machinery & Equipment	22.0	16.1	3.0	3.2	44.3
Total	\$297.9	\$347.6	\$346.3	\$358.2	\$1350.0
Included in Base Plan	\$205.1	\$225.4	\$236.3	\$248.2	\$ 915.0
Additional Required	\$ 92.8	\$122.2	\$110.0	\$110.0	\$ 435.0

CAPITAL PROJECTS FOR
SERVICE IMPROVEMENT AND TRAFFIC DEVELOPMENT
(\$ Millions)

	1973	1974	1975	1976	Total
Service Improvement 2/	\$29.7	\$48.3	\$55.0	\$52.8	\$185.8
Traffic Development 3/	8.1	14.8	10.2	10.3	43.4
Total	\$37.8	\$63.1	\$65.2	\$63.1	\$229.2
Included in Base Plan	\$15.0	\$31.6	\$30.7	\$31.9	\$109.2
Additional Required	\$22.8	\$31.5	\$34.5	\$31.2	\$120.0

Notes:

- 1/ Total Base Plan and additional requirement includes, for 1973, 2.8 million ties; 819 track miles of new and relay welded rail, and 6,190 miles of track surfaced. The averages for years 1974, 1975 and 1976 are 3.9 million ties; 1,030 track miles of new and relay welded rail, and 6,190 miles of track surfaced.
- 2/ Items essential for improving the quality, reliability of service and maintaining safety of operation, such as, terminal improvement, centralized traffic control, hot box detectors, etc.
- 3/ Items necessary for holding existing and attracting new traffic required for Penn Central's reorganization, such as, new or modified Trailvan Terminals, Flexiflo Terminals, etc.

15,000 MILE SYSTEM (FREIGHT ONLY)

PROJECTED INCOME ACCOUNT COMPARISON

WITH

TBS (9-15-72) FORECAST TRAFFIC LEVELS VS. "CONSTANT" 1971 TRAFFIC LEVELS

1973 - 1976

\$ - Millions () = Deficit

Acct. No.	1973		1974		1975		1976	
	TBS	"CONSTANT"	TBS	"CONSTANT"	TBS	"CONSTANT"	TBS	"CONSTANT"
(501) Railway Operating Revenue	\$1,808.5	\$1,654.3	\$1,946.0	\$1,730.4	\$2,084.7	\$1,803.1	\$2,208.9	\$1,861.6
(531) Railway Operating Expenses*	1,501.5	1,479.6	1,532.6	1,495.7	1,558.0	1,505.8	1,583.0	1,515.6
Net Revenue from Railway Operations	307.0	174.7	413.4	234.7	526.7	297.3	625.9	346.0
(532) Railway Tax Accruals*	115.2	116.9	116.8	118.5	117.9	119.6	123.5	125.2
Railway Operating Income	191.8	57.8	296.6	116.2	408.8	177.7	502.4	220.8
Net Rents	243.4	224.2	262.8	235.4	278.0	241.5	290.0	244.0
Net Railway Operating Income	(\$51.6)	(\$166.4)	\$33.8	(\$119.2)	\$130.8	(\$63.8)	\$212.4	(\$23.2)
Net Difference ("TBS" - "CONSTANT") - Yearly	+ \$114.8		+ \$153.0		+ \$194.6		+ \$235.6	
- Cumulative	+ \$114.8		+ \$267.8		+ \$462.4		+ \$698.0	

*Including Labor Protection & Maintenance Stabilization Costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In the Matter of	In Proceedings for the
	Reorganization of a
PENN CENTRAL TRANSPORTATION	Railroad
COMPANY,	
Debtor	No. 70-347

MEMORANDUM AND ORDER NO. 1137

Re: *Reorganization Planning*

FULLAM, J.

March 6, 1973

The Trustees' reports of January 1, 1973 and February 1, 1973, and certain other recent developments, make it necessary for the Court to reevaluate the status of this reorganization, with a view toward charting a future course for the reorganization proceeding which will be consistent with legal and constitutional requirements.

From the very beginning of the reorganization proceeding, it had been apparent that a successful private income-based reorganization of the Debtor would be feasible if certain specified conditions, largely beyond the control of the Trustees, the parties, or this Court, could be met. In general terms, these conditions are: increase in freight business and revenues, rationalization of physical plant, elimination of unnecessary labor costs, and elimination of losses on passenger service.

Under the timetable heretofore established, it was contemplated that, by April 1, 1973, all of these objectives would have been accomplished, or substantially in the process of accomplishment, so that a definitive plan of reorganization would be filed by that date. The plan previously outlined by the Trustees contemplates that realization of these objectives, or "conditions to viability," would have been sufficiently assured by that date to permit a rational forecast that their benefits would accrue in such fashion as to permit consummation of a private income-based reorganization by 1976.

It is now clear, however, that these goals have not been, and cannot be, sufficiently accomplished to permit the filing of a definitive plan on April 1, 1973. Moreover, the recent reports of the Trustees point up an additional factor: the condition of the Debtor's physical plant is such that substantial additional capital investment would be required in order to provide adequately the increased service projected.

The immediate issue before the Court, therefore, is whether the April 1 deadline should be extended. The public interest undoubtedly requires that the Debtor's rail service be continued beyond that date; but the Constitution prohibits sacrificing the property rights of creditors to that public interest without just compensation.

There are three principal lines of inquiry which must be explored: (1) Has the continued operation of the Debtor during reorganization so depleted its assets that, if the Debtor were liquidated, the assets would be insufficient to pay pre-bankruptcy secured debt? (2) Is there a realistic prospect that the Debtor can become profitable enough, promptly enough, to be reorganized? (3) Can an adequate cash-flow be maintained to support continued operations during reorganization? All of these issues are inter-related, and each involves its own variables.

1. *Erosion.* While the precise calculations have not been fully developed, the record justifies the conclusion that post-reorganization deferrals and unpaid administration claims have already eroded the Debtor's estate to the extent of about \$500 million. Whether the constitutional limit has been exceeded depends primarily upon how the remaining assets are to be valued; and this in turn may well depend upon how those assets are to be used at the conclusion of this reorganization. Under any view of the matter, it seems clear that the point of unconstitutionality is fast approaching, if it has not already arrived.

2. *Prospect of profitability.* The reorganization planning to date has been based upon the premise that the Debtor could be converted from an over-sized, low-density railroad with many unnecessary employees to a more compact, high-density railroad operating with

shorter crews, and that the benefits of these changes could be realized in time to produce adequate profits by 1976. It has also been contemplated that, if service essential to the public must be continued at a loss, the losses would be reimbursed from some external source.

The original projections were that income available to pay fixed charges at the level of \$275 to \$290 million would be adequate, and could be achieved by 1976. Later projections have made it appear that a level of approximately \$243 million would be more realistic, and would probably be adequate. All of these figures assume that revenue increases, through a combination of increased tariffs and increased volume, would offset the effects of inflation upon operating costs.

The essence of Section 77 of the Bankruptcy Act is that the legal remedies normally available to creditors may be held in suspension for a reasonable time in order to permit rehabilitation of the enterprise. Whenever it appears that there is no genuine likelihood of ultimate success, the legal and constitutional justification for restraining creditors from exercising their normal remedies disappears. I am not prepared to hold that there is now no reasonable likelihood of viability. But, without minimizing the substantial progress which has been made to date, it is apparent that the required profitability cannot be achieved unless substantial further progress is made in the immediate future to meet the conditions upon which the projected profitability is based.

3. *Cash flow.* The Trustees have been able to continue rail operations to date without actually running out of cash. In substantial part, this has been made possible by borrowing \$100 million on government guaranteed trustees' certificates. But in part, this has also been accomplished, to an extent not precisely determinable from the record, by deferring desirable capital expenditures, and by reducing maintenance and clerical expenses to a level which, in the long run, is probably unacceptable. The enterprise weathered a severe cash crisis within the past month (partly through the cooperation of organized labor in not opposing deferral of certain labor increases); another potential cash crisis looms ahead, in July and August of this year. Continued operation of the railroad during reorganization would have been utterly impossible except by deferring payment of real estate taxes and leased line rentals. It seems clear that, in the absence of substantial improvement, the Debtor cannot continue indefinitely on the present basis without running out of cash; and that, in any event, such items as taxes and rentals, and other legitimate expenses of doing business, cannot simply be deferred indefinitely.

It has long been apparent that the particular problems of Penn Central cannot be completely divorced from problems of national transportation policy. Railroads are, after all, a regulated industry. However unappealing may be the notion that a regulated industry can become bankrupt, the Trustees' efforts to rehabilitate the Debtor are circumscribed by existing statutes and regulations. To the extent that these statutes and regulations, whether in the area of abandonment, tariffs, or resolution of labor disputes, preclude the exercise of self-help in achieving profitability, the legislative and executive branches of government must be looked to for solutions, if solutions are to be forthcoming.

And this is as it should be, for it is those branches of government which should determine whether the kind of railroad which could emerge from a private income-based reorganization would be consistent with long-range goals of national transportation policy. Such matters as how much rail transportation should be provided, how much competition among railroads is desirable in the Northeast, and the extent of public interest in maintaining rail service which cannot be operated profitably, are clearly beyond the province of the Trustees, the other parties to this reorganization, and this Court.

I take judicial notice of the fact that the legislative and executive branches are now addressing themselves to these problems. By joint resolution adopted February 8 and approved by the President on February 9, 1973, Congress has called for recommendations from the appropriate departments, to be followed presumably by Congressional action on a comprehensive scale in the near future. And the Interstate Commerce Commission has initiated a proceeding, Ex Parte 293, dealing with these problems. It would obviously be premature, therefore, for this Court to make final determinations as to the future course of this reorganization proceeding on the basis of the existing legislative and regulatory

framework. The legal and constitutional rights of the parties to this reorganization should be evaluated in the light of whatever changes Congress sees fit to enact.

By the same token, however, this Court cannot ignore the realities of the Debtor's situation. On the basis of the record to date, it appears highly doubtful that the Debtor could properly be permitted to continue to operate on its present basis beyond October 1, 1973.

Under the circumstances, I have concluded that the April 1 deadline should be extended, but that a further hearing should be held on July 2, 1973, to permit a careful and realistic re-evaluation of the situation in the light of intervening events. At that hearing, the Trustees will be required to file either a feasible plan for reorganization of the Debtor, or their proposals for liquidation or other disposition of the enterprise.

ORDER NO. 1137

AND NOW, this 6th day of March, 1973, it is ORDERED:

1. That the deadline for filing proposed plans of reorganization of the Debtor is extended from April 1, 1973 to July 2, 1973.

2. That a hearing shall be held in this Court on July 2, 1973, at which, in the light of intervening events, the Trustees shall file either (a) a feasible plan for reorganization of the Debtor; or (b) suitable proposals for liquidation or other disposition of the enterprise.

/s/ JOHN P. FULLAM

J.

Mr. JARMAN. Mr. Langdon, that is a very comprehensive statement on a very difficult situation. You make clear the position of the trustees that you consider Government ownership and operation would be a poor and unnecessary choice among alternatives that are being considered in trying to reach a solution to this problem.

I think at this point the only comment the Chair would make would be that, as we proceed in this very complicated hearing, any specific recommendations that you would have in the form of legislative proposals for consideration would be most helpful.

We face that basic problem, of course, in considering what we are going to try to do, of having as good an understanding as possible of the cost factor.

In your testimony this morning, you have referred to the fact that the trustees suggested in their February 1 report a basic part of the cost of modernization and upgrading of the reduced Penn Central plant would be approximately \$600 million to \$800 million by 1976, and you indicate your position that this would have to be supplied by the Federal Government at least until the reduced system has developed an earnings record which can attract private capital.

In your February 1 report, as well as in your comments this morning, you emphasize the conviction, which many of us certainly share with you, that private management with a profit incentive of private ownership would be the best solution if achievable.

You mention private management under an incentive contract with ownership of the right-of-way and track and structures by a mixed public and private authority or by a public authority is next best.

We certainly are looking to you gentlemen who have had long experience in this field, and it is a complicated area on which we need the very best counsel possible. I think your statement this morning is good and basic and comprehensive.

I would simply emphasize that, as we progress, come forward when you can informally or formally with us with what you would recommend as the best practical answers which we are all trying to achieve.

Mr. BAKER. We certainly will.

Mr. JARMAN. I have no further questions at this time.

Mr. Dingell?

Mr. DINGELL. Gentlemen, what steps have you taken to retrieve the financial responsibility to the bankrupt estate of the former officers for insider trader activities, for other responsibilities that they achieved to the estate by reason of improper activities?

The investment club, for example, the private jet aviation, and some of the real estates that have spun off—what steps have you taken to achieve recoveries of those assets?

Mr. BAKER. May we have counsel answer it?

Mr. DINGELL. Yes.

Mr. BLANCHETTE. Of course, the trustees are only interested in the civil side of the case but have cooperated fully with other investigations being conducted into various aspects of this and this includes cooperation with the Justice Department, Securities and Exchange Commission, and with the Interstate Commerce Commission, as well as with certain State and local prosecuting authorities.

On the matter of the Executive Jet fiasco, that property was sold through court auspices and the bank, which had been appointed as trustee pursuant to a divestiture order of the Civil Aeronautics Board, has petitioned for compensation.

We have counterclaimed, alleging negligence on the part of the bank in the stewardship of Executive Jet, and have asked for recovery in the approximate amount of \$4 million. That matter is pending before Judge Fullam.

In the matter of general mismanagement and malfeasance, the trustees have assumed responsibility for all lawsuits that were brought on behalf of either the transportation company or the holding company against outside directors, former officers, and others in a variety of cases alleging responsibility to the estate.

That matter is being actively prosecuted by the trustees as plaintiffs before the U.S. District Court in the Eastern District of Pennsylvania, where it is in a multidistrict panel proceeding.

We have taken depositions continuously and are prepared to go to trial whenever the court will release the matter from pretrial proceedings.

We have also instituted actions to recover on the insurance policies that covered some of the directors as well as independent consultants and outsiders. That is again in litigation.

We have also brought suit and sequestered about \$10 million in assets in the District Court of Delaware to recoup the money that was lost in the Lichtenstein debacle where \$4 million was diverted from the transportation company. That matter is on appeal in the U.S. Circuit Court for the Third Circuit and we are awaiting a decision in that case.

Every item that was covered from the various reports has been the subject of litigation, none of which has resulted in judgments to date, but they are very complicated cases.

Mr. DINGELL. We would appreciate it if you would give us a specific report on each of these so we can see what you have done.

Mr. BLANCHETTE. Yes, sir.

[The following information was received for the record:]

STATUS OF PENDING PROCEEDINGS

1. SECURITIES CASES—MULTI-DISTRICT LITIGATION (M.D.L.) DOCKET NO. 56

A number of law suits are presently pending in the United States District Court for the Eastern District of Pennsylvania arising out of the financial problems of the Penn Central Transportation Company. These suits have been consolidated as M.D.L. Docket No. 56 for the purposes of pre-trial discovery in accordance with 28 U.S.C. § 1407. Named in the suits are some 90 individual and corporate defendants, including certain present and former officers and directors of the Transportation Company. Brought in the Federal courts under the Federal Securities laws, these suits also charge certain of the named defendants with various breaches of their common law fiduciary duties to the Transportation Company.

On December 6, 1971, Chief Judge Joseph S. Lord, III, to whom these cases have been assigned, issued an order authorizing the Debtor's Trustees to intervene and to take exclusive control of all derivative claims asserted in 14 of the actions then pending in M.D.L. Docket No. 56. Subsequent orders of the Court have authorized the Trustees to intervene in certain additional cases now also consolidated in M.D.L. Docket No. 56 for the purposes of pre-trial discovery.

The gravamen of the charges contained in these complaints is generally summarized in the Staff Report of the Securities and Exchange Commission to the

Special Subcommittee on Investigation of the House Committee on Interstate and Foreign Commerce, which report has been printed by that Committee under the heading "The Financial Collapse of the Penn Central Company."

Pre-trial discovery proceedings in those cases are currently being actively pursued by the Trustees in cooperation with other plaintiffs.

2. DETROIT BANK & TRUST COMPANY

On August 28, 1968, the American Contract Corporation, a wholly owned subsidiary of the Penn Central Transportation Company, entered into a Voting and Liquidating Trust Agreement with the Detroit Bank & Trust Company. The Trust Agreement was concerned with stock held by the American Contract Corporation in Executive Jet Aviation, and the Agreement was established as a result of certain Civil Aeronautics Board objections to the exercise of control by the Transportation Company over Executive Jet Aviation.

From November 11, 1968, through November 18, 1969, the Detroit Bank, acting as Trustee, approved in excess of \$4.3 million in loans to Executive Jet Aviation. These loans were made by funds provided by the Transportation Company through its subsidiary, American Contract Corporation.

On January 24, 1972, the Reorganization Court, the United States District Court for the Eastern District of Pennsylvania, granted the Petition of the Detroit Bank for approval of the sale of the debt and equity interests of the American Contract Company in Executive Jet Aviation. However, in its Order approving the sale, the Reorganization Court retained jurisdiction "over the distribution of proceeds of such sale, the allowance of compensation and reimbursement to the Liquidating Trustee and the accounting by the Liquidating Trustee for its stewardship under the foregoing Voting and Liquidating Trust Agreement."

On April 10, 1972 the Detroit Bank filed its Petition for allowance of account, for authority to pay unpaid fees and expenses, and for certain other relief. The Trustees of the Penn Central Transportation Company have filed their answer in opposition to the Petition of the Detroit Bank. Additionally, the Debtor's Trustees have petitioned the Reorganization Court to surcharge the Detroit Bank for its breach of fiduciary duty in the administration of the loans to Executive Jet Aviation as well as for the concomitant reduction of the value of the corpus entrusted to its care.

This matter is currently pending before the Reorganization Court.

3. UNDERWRITER'S COMPLAINT FOR RESCISSION OF CONTRACT

On July 3, 1968, the Penn Central Company, a predecessor of the Penn Central Transportation Company, purchased a company reimbursement policy from the Lloyd's of London underwriters. On the same date there was also purchased a Directors and Officers liability policy of insurance, insuring the Officers and Directors of the then Penn Central Company. Following the purchase of those policies, various legal actions have been instituted against the present and former Officers, and former Directors of the Penn Central Transportation Company, its predecessors and affiliated companies.

Under agreement of merger, dated January 12, 1962, between the Pennsylvania Railroad Company and the New York Central Railroad Company, the Penn Central Transportation Company may be obligated to provide indemnification for such Officers and Directors. Similar indemnification may be required for the same Officers and Directors pursuant to the Pennsylvania Business Corporation law. The potential indemnification could represent a very substantial burden on the Debtor's estate. On February 16, 1971, the Lloyd's of London underwriters filed a complaint for rescission of these policies on the ground of misstatements or failure to provide accurate information in the applications for the coverage. The Trustees are seeking the right to intervene in the litigation to protect the right of recovery under the policies. The case is in active pre-trial discovery.

4. BAKER V. GOETZ

On March 10, 1971, a suit was instituted by the Trustees in the United States District Court for the District of Delaware against Fidel Goetz and a group of corporations and other juridical entities controlled by Goetz, seeking the recovery of 16,800,000 DM (approximately \$4.5 million) plus punitive damages. The

complaint alleges that these monies were fraudulently appropriated by Goetz from the Transportation Company through certain of Goetz' legal entities based in Liechtenstein.

On March 10, 1971, the Federal Court issued a sequestration order under Delaware law, attaching property of the defendants consisting of notes or shares of a number of Delaware corporations. An amended complaint was filed on March 19, 1971, and on the same day the Court issued a second sequestration order.

Under the two sequestration orders, notes and debentures having a face value of approximately \$7.6 million, plus certain other property belonging to the defendants, have been sequestered.

On December 20, 1971, the Delaware District Court granted the motion of defendants to vacate the March 19, 1971 order of sequestration. However, the Court denied the defendants' motion to dismiss the complaint for lack of jurisdiction.

The Court of Appeals for the Third Circuit on December 23, 1971 granted the Trustees' motion for a stay of the vacation of the order of sequestration pending an appeal therefrom, which was subsequently taken.

The matter is now awaiting decision by the Court of Appeals following the presentation of oral argument in which the Trustees seek to preserve the sequestration order so as to proceed with the case on the merits against the defendants.

5. COOPERATION WITH STATE AND FEDERAL AUTHORITIES

Throughout their stewardship, the Trustees of the Transportation Company have endeavored to cooperate fully with all State and Federal authorities investigating the circumstances of the Penn Central Transportation Company Reorganization.

In this regard, the Trustees have offered assistance to various Federal agencies and departments, including the Securities and Exchange Commission, the Interstate Commerce Commission, the Department of Justice and the Department of Transportation.

In addition to such cooperation with Federal agencies and departments, the Trustees have similarly cooperated in making the files of the Transportation Company available for the inspection of staff of the interested committees of both the House of Representatives and the Senate.

Finally, the Trustees have equally cooperated with State and local authorities to assist them in their investigations of matters arising out of the reorganization of the Transportation Company.

Mr. DINGELL. I am also troubled about the matter of sale of stocks by corporate officers after the 1st of January in the year in which bankruptcy occurred.

Mr. BLANCHETTE. That is the matter, sir, which is, in the first instance, under the jurisdiction of the Securities and Exchange Commission which has actively investigated it; we are waiting to take our position on the report of the SEC.

Mr. DINGELL. You also have rights to litigate that question as private litigants as opposed to relying upon SEC in that matter?

Mr. BLANCHETTE. To the extent we have rights, but a large measure of that recovery is one that is asserted by other stockholders, rather than by the company itself, who say that they bought securities at higher or lower prices than they would have bought and they seek individual recoveries.

To the extent however that there are corporate rights involved we shall assert them.

Mr. DINGELL. Now, what is the total amount of the Federal assistance, and you don't need to tell us this now, but assistance from the Federal Government that will be required under the different proposals you have submitted to us?

Do you have the figures today or would you like to submit them for the record?

Mr. LANGDON. Sir, the Commission has measured tentatively, in the case of the Penn Central and I think in the case of the Northeast railroads generally, the amount of money that would stem erosion during this initial period suggested under their legislation.

The Commission estimated that in our case it was \$135 million annually, not including taxes, which, under the Commission proposal, would be, if adopted, forgiven, and which if not forgiven would add another \$65 million.

We would like, sir, as suggested here in this final statement that I read, for the committee to have the benefit under the legislation of an Interstate Commerce Commission report, to be available hopefully within 60 days, of the extent of the erosion that should be covered and made good during the period that we will call the study period.

Mr. DINGELL. Of course, I must confess, gentlemen, I find that there is a duty on the part of the railroad under its authority provided by the Interstate Commerce Commission Act to provide service.

Mr. LANGDON. Yes, sir.

Mr. DINGELL. And, as I read the law, and I may have a curious analysis of the law, but as I read the law the investors simply invest upon the speculative idea of something that they are going to get returns for that.

I recognize the need to treat them fairly, but you recognize the urgent need to have the service continue. I have the feeling, gentlemen, you have your responsibilities to the public rather upside down. You seem to view your responsibilities to return the assets, or the assets of the stockholders to the stockholders, as opposed to providing continued service.

If this expresses distress on my part or displeasure, I hope you will accept it as such, because that is the prime responsibility. The stockholders had their full opportunity to reorganize their affairs while they were in there. They also had the opportunity to throw the rascals out, neither of which prerogative they exercised fully.

We now see you gentlemen urging before us all manners of special preference, exemptions from law, special acts of government, subsidies, exemptions from taxes and all sorts of other extraordinary remedies in order that we take steps to assure the stockholders remain as whole as possible.

Now, I recognize you have some responsibilities and I recognize you also have responsibilities to creditors, but somehow or other I don't get in your comments a thread of deep concern over the public interest in this matter to see to it that the railroads continue operating.

Mr. BAKER. I will try to answer that.

I think we have the responsibility to keep the railroad going in the public interest.

Mr. DINGELL. I think that is your first responsibility.

Mr. BAKER. Not only because of the rights originally given to the railroads and under the ICC Act but under the bankruptcy law we do, too, which is clear.

Mr. DINGELL. Section 77 so provides.

Mr. BAKER. Yes, as amended in 1930's particularly for public utilities to see that public utilities when they went into bankruptcy that the assets be spread among creditors but something new, that the service must be kept going in the public interest.

Mr. DINGELL. That is the reason for chapter 77.

Mr. BAKER. What the lawyers tell us is the problem now and what is on the judge's mind is that under the concept of the fifth amendment, taking of property without due process of law, there apparently comes a time legally, as an estate in bankruptcy wears away, a point at which the erosion of the estate becomes unconstitutional because it is eroding and the owners so-called, the creditors, stockholders, come way down after the other creditors, is eroding to the point that this amounts to a taking of property without due process of law, under the Constitution, and these are all words to me because I am not a lawyer, but that is what is on the judge's mind and that is why he has set down on July 2 a hearing on this difficult problem where the two major aims that he has, keep it going and don't let it erode, keep it going and don't let the estate erode unconstitutionally, those two things are on a collision course and he has to decide whether the erosion that results from keeping it going in the public interest, which everybody wants to do, is such that is unconstitutional, taking of property without due process of law from the creditor's viewpoint; we are sitting in the middle of that.

Don't think for a minute we think that every possible effort shouldn't be made to keep the service going in the public interest.

Mr. DINGELL. One more comment.

What have you done with regard to petitioning ICC for rate adjustments to have the railroad function on a more profitable basis?

Mr. LANGDON. You realize, sir, that we are in a highly competitive industry. Unfortunately, our rates cannot go up unless there is general concurrence on the part of our competitors that rates should go up.

This year in particular, and even last year, during the latter part of last year, there was a declination on the part of one of our principal competitors to propose an increase in rates and this, in effect, froze the situation in the East and still freezes it.

We have applied, along with the Western and Southern lines and the other Eastern lines, for a general rate increase and are moving before the Commission with a view to increasing our rates, hopefully, 5 percent, and if the dissenting line, or rather the nonsubscribing railroad won't join in this, we are going to be faced, assuming the Commission authorizes the increases, we are going to be faced with a very difficult problem, because our rates, being competitive as they are, cannot be higher than the rates of other railroads serving the common points.

Then it is a real problem.

Now, on the other side, sir, we do have some rates which are less than the cost of transportation and we have done what we could in this respect. That is, we have increased some of the rates where we had control of them and we have gotten other railroads in certain cases, where there was a competitive situation, to join us.

But we have a great many of our noncompensatory rates which really are in the form of divisions accruing to the Northeastern lines of "through" rates, applying on traffic to and from the South and West, and those rates, or those divisions of rates cannot be increased, of course, without the concurrence of the parties to the joint rates.

We have, in our situation, sir, in considering the Northeast as a whole, as we compute it, a deficit of about \$100 to \$125 million a year arising from what we regard as improper divisions of rates applying to and from the West and the South.

Mr. DINGELL. Have you sought relief on that particular point?

Mr. LANGDON. Yes, sir. We asked the railroads to arbitrate and they refused, thus, leaving us to the Interstate Commerce Commission, where complaints involving the North-South divisions are presently pending.

That case, if it follows precedent, and all of the litigation that will ensue, will probably take 10 years to decide. The Commission's authority is limited to fixing divisions for the future. There is no jurisdiction in the Commission to fix divisions retroactively if found to be justified, with a result that there is every incentive on the part of the Southern and Western lines who are defendants, particularly the Southern lines at the present time, to hold on to their divisions as long as possible, to stall and delay, because there is everything to be gained by delay and nothing to lose.

Mr. DINGELL. All right, now, I have taken more time than I am entitled to, but would you submit to us specific suggestions with regard to, among other things, to things regarding the closure of this matter in terms of legislation.

You made a number of suggestions.

Mr. LANGDON. Yes, sir, that has been drafted and we are prepared to submit it. What it does is give the Commission power to fix divisions retroactively.

Mr. DINGELL. I think it would be well for you to submit to us a series of suggestions with regard to powers of the ICC that are needed to expeditiously conclude the problems you have pending before that agency.

Mr. LANGDON. We will try to do so.

Mr. DINGELL. I think that would help also.

Thank you, Mr. Chairman.

[Testimony resumes on p. 285.]

[The following information was received for the record:]

PROPOSED LEGISLATION RELATING TO DIVISIONS

Attached is a draft of an amendment to Section 15(b) designed primarily to provide that the ICC may make its final award retroactive to the date the case was commenced. Making the award retroactive would eliminate profit by delay and the incentive to delay.

Attached also are summaries of the chronology of the Official-Southern Divisions Case, ICC Docket No. 29835, and the current North-South Divisions Case, ICC Docket No. 35585.

Proposed Amendment to Section 15(6) of the Interstate Commerce Act, 49 USC 15(6), to authorize the Commission to make retroactive adjustment *pendente lite* of inequitable divisions; to permit the Interstate Commerce Commission to enter interim orders requiring interim increases in divisions *pendente lite*, and to require the Commission to direct its staff to conduct traffic and cost studies.

(Deletions in brackets, new matter in *italic*)

Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and [in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial,] the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation or *for the period*

subsequent to the enactment of this amendment, whichever is the later,) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith.

The Commission's power to require retroactive adjustment of divisions shall apply in respect to all divisions, whether prescribed by the Interstate Commerce Commission or otherwise established. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge. In a proceeding instituted pursuant to this subsection the Commission may make a preliminary investigation without full hearing and if after such preliminary investigation the Commission finds that there is reason to believe that the division of joint rates, fares and charges are unjust, unreasonable, inequitable, or unduly preferential or prejudicial, the Commission may by interim order prescribe the just, reasonable, and equitable divisions to be received by the several carriers pending final determination of the case, but in case of divisions fixed by such interim order the Commission may require the carriers to keep accurate account in detail of all amounts settled by reason of such interim order, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, such portion of such increased divisions as by its final decision may be found not justified.

In any proceeding instituted pursuant to this subsection in which the Commission deems that the cost of transporting the property involved may be controlling in its determination, the Commission by its staff shall conduct a study of the shipments involved and the revenues received by the carriers that transport said shipments, and the Commission by its staff shall conduct a study of the cost of performing that transportation service, and the expense of such studies shall be borne by and assessed against the parties to the proceeding on such basis as the Commission shall determine to be fair.

**CURRENT NORTH-SOUTH DIVISIONS CASE—THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY VERSUS ABERDEEN AND ROCKFISH RAILROAD COMPANY
ICC DOCKET NO. 35585**

(Chronology of major action—Date and action taken)

- March 17, 1972, complaint of Northern lines.
- March 17, 1972, petition of Northern lines for prehearing conference.
- May 1, 1972, cross complaint of Southern lines.
- May 9, 1972, complaint of Midwestern lines.
- June 14, 1972, supplemental request by Northern lines for prehearing conference.
- June 29, 1972, petition of Southern Governors Conference and Southeastern Regulatory Utility Commissioners for leave to intervene.
- September 25, 1972, prehearing conference held before Administrative Law Judge Forest Gordon of ICC. Conference continued to later date.
- December 12, 1972, prehearing conference resumed before Judge Gordon.
- Principal question regarding size of car tracing study for determination of costs.
- January 2, 1973, prehearing conference Order of Judge Gordon issued. The Order requires joint studies of operating characteristics of North-South freight traffic be conducted over a 12-month period commencing March 1, 1973.
- January 9, 1973, southern lines object to Judge Gordon's Order of January 2.
- January 9, 1973, northern lines object to Judge Gordon's Order of January 2.

OFFICIAL-SOUTHERN DIVISIONS CASE—ICC DOCKET NO. 29885

(Major action during period 1959-1971—Date and action)

- May 1, 1959, ICC Order opening case for hearing.
- February 3, 1965, ICC Report and Order, *Official-Southern Divisions*, 325 ICC 1. This order required an increase in the Northern lines' share of the revenue on north-south traffic.

May 8, 1965, ICC Supplemental Report and Order. *Official-Southern Divisions*, 325 ICC 449. This order modified the order of February 3, 1965 in respect to traffic handled by the Norfolk Southern Railway Company.

May 27, 1965, Order of District Court denying interlocutory injunction against ICC orders on condition that Official Territory railroads refund increase in divisions if ICC order is set aside. *Aberdeen and Rockfish Railroad Co. v. United States* (USDC ED La.).

June 30, 1967, ICC Order set aside and cause remanded to ICC for further proceedings. *Aberdeen and Rockfish Railroad Co. v. United States*, 270 F. Supp. 695.

March 4, 1968, United States Supreme Court noted probable jurisdiction of appeals. *B. & O. R. Co. v. Aberdeen and R. R. Co.*, 390 US 940.

March 12, 1968, Opinion of Supreme Court modifying District Court Order and affirming as modified. *B. & O. R. Co. v. Aberdeen and R. R. Co.*, 393 US 87, Rehearing denied, 393 US 1124.

April 24, 1969, Opinion and Order of District Court remanding case to ICC and requiring refund of the increased amount of divisions, pursuant to the condition imposed in its Order of May 27, 1965. *Aberdeen & Rockfish Railroad Co. v. United States*, 301 F. Supp. 889.

Pursuant to that Order and subsequent stipulation, the Northern lines paid \$33,381,100 to the Southern lines.

April 21, 1970, ICC Report and Order on remand fixing a new divisional basis which provided the Northern lines approximately 85% of the increase prescribed in the May 8, 1965 Order. *Official-Southern Divisions*, 337 ICC 74.

October 29, 1970, Order of District Court setting aside ICC Order of April 12, 1970 and remanding to ICC for further proceedings. *Aberdeen & Rockfish Railroad Co. v. United States*, (USDC ED La., unreported).

December 16, 1970, Order of District Court limiting further hearing before ICC, *Aberdeen & Rockfish Railroad Co. v. United States* (USDC ED La., unreported). This Order was appealed to the United States Supreme Court, which appeal was dismissed as moot on October 12, 1971, 404 US 806.

February 11, 1971, ICC Order reopening case for further hearing in conformance with the December 16, 1970 Order of the District Court.

August 10, 1971, ICC Order dismissing investigation without prejudice to filing new complaints.

ICC DOCKET NO. 35685

(Date and action taken)

March 5, 1973, Order of Commission responsive to petition of January 9, 1973, directing that the study of operating characteristics required by the Order of January 2, 1973, be made of a stratified statistical sample of 7,000 car shipments during the 12-month period commencing 60 days after service of the Order (on May 5, 1973).

April 4, 1973, petition of Southern Railroad for clarification on Order served March 5.

April 4, 1973, petition of Northern Railroads for reconsideration of Order served March 5.

April 13, 1973, replies to petitions filed on April 4.

The study is now scheduled to commence with shipments made on May 4. It is scheduled to be concluded May 3, 1973, with the raw material available for processing on or about June 1, 1974. If no delays are encountered, the data should be available for submission in evidence to the Commission in the fall of 1974.

AMENDMENT TO SECTION 1 OF THE ACT BY ADDING NEW PARAGRAPH 23, WHICH DEFINES PROCEDURES AND STANDARDS IN ABANDONMENTS PROPOSED BY RAILROADS IN REORGANIZATION

23(a) Anything in paragraph 20 of this section to the contrary notwithstanding, a carrier in reorganization under the provisions of Section 77 of the Bankruptcy Act (49 USC § 205) which pursuant to order of the court having jurisdiction of the carrier in reorganization files notice of abandonment of one or more lines of railroad or the operations thereof with the Commission and with the Governor of each state in which the line or lines of railroad are situate and posts notice of abandonment at every freight depot on said line or lines of railroad sought to be abandoned at least thirty days in advance of the proposed abandonment may

abandon the line or lines of railroad or the operation thereof pursuant to said notice except as otherwise ordered by the Commission pursuant to this paragraph.

Upon the filing of such notice the Commission shall have authority during said thirty-day notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed abandonment and pending such investigation and the decision thereon, the Commission may by order prohibit the abandonment of operations of the line or lines of railroad for a period not longer than four months beyond the date when such abandonment would otherwise have occurred. If prior to the date when the abandonment would otherwise have become effective the Commission institutes an investigation without requiring continued operation of the line or lines sought to be abandoned the carrier shall not remove the line or facilities from place during the seven-month period immediately following the date on which the abandonment would otherwise have occurred. If the Commission does not complete its investigation during the four-month period immediately following the date on which the abandonment would otherwise have occurred, the carrier may discontinue operation of the line if it has not previously done so. If the Commission does not complete its investigation during the seven-month period immediately following the date on which the abandonment would otherwise have occurred, the Commission shall be deemed to have approved the abandonment at the end of said seven-month period and the carrier may abandon said line or lines of railroad.

In its investigation the Commission shall determine whether the line involved is being operated at a loss, as that term is defined in subparagraph (b) of this paragraph 23. If the Commission determines that such line is being operated at a loss, the Commission, prior to the expiration of said seven-month period, and with or without a hearing officer's report, shall approve the abandonment unless the Commission finds that funds are immediately available to eliminate such loss in the operation of the line through participation in state, local or federal programs for the financial support of the operation or maintenance of such line or otherwise. If the Commission determines that the line is not being operated at a loss or determines that the loss has been or immediately will be eliminated by state, local or federal programs, the Commission shall issue an order requiring the railroad to continue operation of the line or lines involved, which order shall be without prejudice to the subsequent filing of a notice of abandonment of said line under this paragraph or the filing of an application for a certificate of public convenience and necessity under paragraphs 18-22 of this section.

► (b) In this paragraph 23 "being operated at a loss" in relation to any line means that abandonment of the line would permit a reduction of the railroad's avoidable costs, including depreciation on equipment and structures and the costs of rehabilitation during the following five-year period, or would produce other economic benefits, in an amount exceeding the probable revenue loss which would result from such abandonment during said period.

(c) All suits to set aside or review the action or inaction of the Commission under this paragraph 23 shall be brought before the court having jurisdiction of the carrier in reorganization under the provisions of Section 77 of the Bankruptcy Act (49 USC §205), the provisions of 28 USC §§ 2284, 2321, 2324, 2325 to the contrary notwithstanding.

ANALYSIS OF INCREASES SOUGHT AND ALLOWED EASTERN RAILROADS BY THE INTERSTATE COMMERCE COMMISSION IN RECENT GENERAL FREIGHT RATE INCREASE CASES

	X-265	X-267	X-281	X-295
Date petition filed.....	Mar. 3, 1970	Sept. 1, 1970	Dec. 13, 1971	May 20, 1973
Amount of increase sought (percent).....	6	15	2.5	5
Interim increase effective.....	June 9, 1970	Nov. 20, 1970	Feb. 5, 1972
Amount of interim increase (percent).....	5	8	2.5
Final increase effective.....	Nov. 20, 1970	Apr. 12, 1971	Oct. 23, 1972
Amount of final increase (percent).....	5.8	14	4.0

It should be noted that the percentages in some instances are approximate because of the fact that the increases proposed were sometimes selective and exempted some classes of traffic. Also, the amount of the final interim increases authorized are affected by hold-downs or exceptions prescribed by the ICC. However, the percentages and dates do provide a general review of the times involved in general increase proceedings and the extent to which the ICC has limited the

railroads' rate increase proposals. The X-281 case involved a 2.5% surcharge sought by petition filed 12/13/71, and a petition for a selective increase filed 2/27/72. The 2.5% surcharge, which became effective on 2/5/72, was supplanted when the selective increase, approximating 4%, became effective on 10/23/72.

Mr. JARMAN. Mr. Harvey?

Mr. HARVEY. Thank you. I apologize, Mr. Langdon, I am late coming into this problem and not aware of as many aspects of it as I no doubt should be. I wondered, though, if you could elaborate a little bit with regard to the court's order and what is expected in court on July 2?

Are you expected by the judge at that time to come into court with legislation that has been passed by both bodies of the Congress or something more informal than that? What is expected at the time you make your report to the judge?

Mr. LANGDON. We report, sir, on July 2 as to the status of the congressional consideration of a problem that in our judgment can be solved only by the Congress and, if, at that time, there is real movement here in the Congress in the direction of an ultimate solution, that would be of course included in our report to the court.

This is to enable the court to decide the very difficult problem which Mr. Baker just described. We would be under obligation, as I say, to report and hopefully there would by that time be action by this committee and the full committee and possibly even, sir, by the House.

This is a real emergency, as we see it, so that what we would like to do on July 2 is report that Congress has acted in a way that provides a solution or at least a stopping of the erosion to permit a study of the ultimate solution.

Mr. HARVEY. I know what you would like to report to the judge. I think my question pertains more to what if you don't have exactly just that? What if, for example, this subcommittee and maybe the full committee has acted but not the House or Senate? Is the judge in that case likely to be arbitrary and say, "No, I won't give Congress any more time."

Maybe it is unfair to ask you this—it should be asked of the judge—but I am trying to get an idea not having read the court's order.

Mr. BAKER. As I see it, what the court has told us to do is come up on July 2 with a plan of reorganization or a plan of liquidation. Our ability to offer a plan of reorganization, which could stand up against arguments from the other side, let's say, without commenting on it, we have to see light at the end of the tunnel, a private reorganization course or action and what happens between now and then is going to affect our ability to convince the judge that there is light at the end of the tunnel.

Mr. HARVEY. That is not a very good phrase here in the Congress.

Mr. BAKER. That there is a reasonable chance of success of a private enterprise reorganization, which, as we have indicated, in the January 1 and February 1 report, looks to us to require some Federal help.

If we don't see a probability of such Federal help, the kind that ICC was talking about and so forth, presumably we would then, under orders from the court, have to come in with a plan of liquidations.

Mr. HARVEY. You sort of beg the question. Maybe I can request Mr. Blanchette, your counsel, to answer.

Mr. BLANCHETTE. I am counsel now, sir, but I don't know if I will be after answering your question.

Mr. HARVEY. Well, Mr. Baker speaks of going to the court and talking about probabilities. Is this what the court asks or is the court asking for definite action by Congress?

Mr. BLANCHETTE. The order says that the trustees are directed on July 2 to file a plan which contemplates continuing responsibility toward a reorganization along more conventional or traditional lines or, in the alternative, to come up with suitable proposals for a liquidation or other disposition of the enterprise. Depending upon the progress made at the time of the hearing, the trustees will or will not be able to do the former; namely, frame a plan of reorganization that is based upon, generally speaking, a continuation of the enterprise as presently constituted.

In the alternative, if we can't do that and we have to work on that now in the event that the former does not happen, we will have for the trustee's consideration and then for submission to the court what would be done, what we would propose to do, by way of a dismemberment or liquidating type of reorganization plan. They are both reorganization plans, one contemplating a sort of gradual phasing out and one a continuation. As to what the court expects, that order was not issued on anything else but the trustee's reports to the court on January 1 and February 1.

No other party was given an opportunity to address itself formally to the court as to what it wanted to address itself to. Therefore, the answer is the court would not be arbitrary, but what course the court would take has to depend on not only what the trustees submit but on the other parties in the case, including the Department of Transportation, Justice Department, State and local authorities, Interstate Commerce Commission, almost every State in which we operate as a party in the case, the secured creditors and unsecured creditors, the holding company, each of them will contribute something to the court.

I am just candidly unable to predict what the court would conclude on that basis, except to say that a fair reading of the court's decision is that if we are on October 1 where we are today in terms of legislation and enactment, the court seems to indicate it would order a gradual cessation of services.

Mr. HARVEY. Well, Mr. Blanchette, if I understand correctly, what you say is, if this Congress fails to do anything you are unable to predict what the court will say. Is that correct?

Mr. BLANCHETTE. Unable to predict, yes, sir.

Mr. HARVEY. And I take it, Mr. Langdon, that that is why you stressed so much the temporary refinancing feature of the ICC proposal; is that correct? That it is particularly appealing because it solves the immediate problem for the next 3 years?

Mr. LANGDON. Yes. Service continues, in other words, and the erosion is stopped and while everybody backs away and comes up with a final solution, hopefully.

Mr. HARVEY. No further questions, Mr. Chairman.

Mr. JARMAN. In connection with your line of questioning, Mr. Harvey, I might say just quoting from the memorandum and order 1137, part 6, of this year, the judge does say:

I take judicial notice of the fact that the legislative and executive branches are now addressing themselves to these problems by Joint Resolution adopted February 8 and approved by the President on February 9, 1973.

The Congress has called for recommendations from the appropriate departments to be followed presumably by congressional action on a comprehensive scale in the near future and the Interstate Commerce Commission has initiated a proceeding Ex Parte 293 dealing with these problems.

It would obviously be premature therefore for this court to make final determinations as to the future course of this reorganization proceeding on the basis of the existing legislative and regulatory framework. The legal and constitutional rights of the parties to this reorganization should be evaluated in the light of whatever changes Congress sees fit to enact.

By the same token, however, this court cannot ignore the realities of the debtor situation. On the basis of the record to date it appears highly doubtful the debtor could properly be permitted to continue to operate on the present basis beyond October 1, 1973.

Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman.

Gentlemen, as you know, I have talked with you off and on, and with just about everybody else I can think of, for about 3 years on this matter and I have read all of the judge's opinions and read your reports and, Mr. Blanchette, I think I would like, first, the answer to this question, and I am going to state it as a conclusion and then you deny it for me, if that is appropriate.

There is not a chance in hell of this company reorganizing itself without the Government putting in some place between \$500 million and \$1 billion, is there?

Mr. BLANCHETTE. The definition of our word "reorganizing"?

Mr. ADAMS. All right, let's define it precisely, "reorganizing into a viable Penn Central operation as opposed to reorganizing into some kind of either liquidation or a disposal of its transportation assets."

Mr. BLANCHETTE. In my personal opinion, no.

Mr. ADAMS. You and I agree completely on this.

Mr. BLANCHETTE. That is a personal observation.

Mr. ADAMS. I know that, and I don't want to put you on the spot, but I want to be sure the committee and all others involved understand why many of us are now putting up solutions because I think the solution should start today, that we are facing a liquidation as of July 2 and, by October 1, most certainly in some form.

Mr. Baker or Mr. Langdon, do you want to comment on that further?

Mr. BAKER. I can summarize my comment. I agree with Mr. Blanchette.

Mr. ADAMS. You agree with Mr. Blanchette?

Mr. LANGDON. Yes.

Mr. ADAMS. You agree also, Mr. Moore?

Mr. MOORE. Yes.

Mr. ADAMS. Now we have that out of the way. Let's talk about what we do in terms of working with the problem. As you all probably know, a number of us have put forward proposals, and I want to ask questions about them. There may be some things, Mr. Blanchette, we would like for the record because the committee needs an underlying basis of information as to how much these various things will cost and how they are going to be financed.

Now, the first is this: If we were to proceed with the ICC plan, which is basically an operating subsidy in the form of a lease and a

lease-back on a limited basis, not paying for certain ordinary operating and other expenses, you mentioned I believe that the cost would be, for the Penn Central, the \$135 million per year and then if we added taxes it would be \$65 million more or roughly \$200 million a year, is that correct?

Mr. LANGDON. Those are the Commission figures.

Mr. ADAMS. You have a different figure then?

Mr. LANGDON. It depends; we would like to submit, sir, our analysis of this. I think they are pretty close to being right.

Mr. ADAMS. Would you submit those figures to the committee?

Mr. LANGDON. Yes, sir.

[The following information was received for the record.]

EROSION OF THE PENN CENTRAL ESTATE

Determination of the amount necessary temporarily to stem unconstitutional erosion of the Penn Central estate raises novel and complex issues. Because many claims, notably state and local taxes, are being deferred by the Trustees presently, unconstitutional erosion is greater than the amount of the cash attrition in the estate on a basis which defers many post-bankruptcy obligations.

We believe that an infusion of cash for the fiscal year 1974 on the order of \$200 million would permit operations to be continued on a constitutionally permissible basis. This figure assumes that taxes to state and local authorities would continue to accrue against the estate. The figure also assumes that AMTRAK will continue to be unable to reimburse the estate for intercity operations on a fully compensatory basis. To the extent that the payment by AMTRAK is increased, the amount necessary will be *pro tanto* reduced.

We respectfully suggest that any measure which stems erosion on a temporary basis must be accompanied by legislation which would permit immediate institution of long-range measures, such as those outlined in principle in the ICC report.

Mr. ADAMS. I don't want to take time in oral argument or details like that. We need to know a figure as to what it would cost and then if you have an estimate, and we will also ask other people to submit them, too, as to what the cost of the other six bankrupt lines are, because the proposal of the ICC is that we would generally lease and lease-back over the entire system so it would remain viable.

Mr. LANDON. One thing that should be noted at this time, sir, perhaps, is whether Amtrak can be authorized and directed to pay us full costs.

Mr. ADAMS. Your claim on that is about \$53 million, isn't it?

Mr. LANGDON. About \$60 million.

Mr. ADAMS. That is all right.

Now, I would like to ask you next because there are various figures, but I want to get them directly from you. If Amtrak were to purchase the intercity system, Washington, D.C., to New York, then New York to Boston, what would be the cost of the purchase of that system? I am not talking now about all of the commuter lines which may have to be dealt with on a separate basis, but the basic intercity rail system. The figure listed in the newspaper is \$451 million, is that about right?

Mr. BAKER. We don't know exactly what the final figure would be, but the figures, or some of the figures we had would indicate that it might run, or it would probably be more than \$1 billion, something more than \$1 billion. That is both freight, or for both freight and passenger service.

Mr. ADAMS. I am not talking about the air rights, buildings, and so on, I am talking about the basic right-of-way. You have a figure of \$1.227 billion, but that includes certain lines around New York City and I assume you include your yards there, is that correct?

Mr. BAKER. That is correct; I am not sure whether the figure I was given of slightly more than \$1 billion included Harrisburg and say New Haven-Springfield-Boston, those two that are sometimes included by some people and not by others.

We will certainly supply figures and tie them down to exactly what is covered.

Mr. ADAMS. All right, I would like to have you supply figures and on these two bases, Mr. Blanchette.

One is under the basis of the New Haven case, which is basically this was an operating concern, but it was scrapped but not scrapped, and I would like it on the basis of an operating concern and on a concern that it is no longer operating.

[The following information was received for the record:]

VALUATION OF THE NORTHEAST PASSENGER CORRIDOR

1. DEFINITION OF CORRIDOR

The Trustees have developed valuation figures for both a basic and an expanded corridor. The *Basic Corridor* is the main line used in intercity passenger service from Washington Terminal in Washington, D.C., through Penn Station in New York City and along the Shore Route to Boston including stations and terminals but excluding branch lines and adjacent freight yard facilities of any major significance. The *Expanded Corridor* also includes the line between Philadelphia and Harrisburg, the New York and Long Branch line and various branch lines which are utilized primarily in commuter passenger service.

2. VALUE OF CORRIDOR

In their efforts to open negotiation with AMTRAK, the Trustees used an investment base value of \$1.116 billion for the *Expanded Corridor* and of \$0.935 billion for the *Basic Corridor*. On the basis of reproduction cost new less depreciation, the *Expanded Corridor* has a value of approximately \$1.971 billion and the *Basic Corridor* a value of \$1.6 billion. The scrap value of the *Basic Corridor* is estimated roughly at \$0.500 billion. The Trustees, however, do not believe that scrap value is an appropriate basis of value if the Corridor is to be continued in railroad use.

These valuation estimates do not take into account adjustments which would occur if the property were sold. For example, the price would be reduced if either the *Basic* or the *Expanded Corridor* were sold exclusive of subsurface, air and various easement rights; this figure has not been calculated. If freight service were retained in the Corridor, any reserved trackage rights for freight use would reduce the price. Conversely, if the Corridor were devoted exclusively to passenger use, substantial relocation costs would be involved to reach shippers and receivers in this area. These costs would have to be dealt with in a satisfactory manner before the feasibility of the sale could be determined.

3. DEBT ENCUMBERING THE CORRIDOR

A. Liquidation basis

The liens of mortgages encumbering the Corridor frequently attach to properties outside the Corridor, so it is difficult to arrive at a single value for debt. However, if the *Basic Corridor* were to be sold, an estimated \$333 million would be required to satisfy liens arising from bonded indebtedness and \$19 million would be required to discharge deferred taxes. It might be necessary or desirable as well to set aside some funds in addition to anticipate retirement of the Government guaranteed Trustees' Certificates in the principal amount of \$100 million.

If the *Expanded Corridor* were to be sold, an estimated \$494 million would be required to satisfy liens arising from bonded indebtedness and \$21 million would be required to discharge deferred taxes.

Of the amounts remaining after satisfying these pre-bankruptcy debts, \$583 million in the case of the *Basic Corridor* and \$651 million for the *Expanded Corridor*, some amounts may be used to satisfy other debt and outside ownership interests.

B. Reorganization basis

If viability were established for the remainder of Penn Central, it is possible that a substantial portion of the purchase price could be used to meet capital improvement needs of the rail system. Because of present uncertainties, no reasonable estimate can now be made.

NOTE: The above figures represent the Trustees' best estimates and judgment. Final determination would, of course, have to be made by the Court after hearing any views and evidence offered by interested parties.

Mr. BLANCHETTE. Sir, you raised one question I would volunteer to elaborate on.

The price of the acquisitions is materially altered if the Government does not acquire air rights or subsurface rights.

Mr. ADAMS. Suppose we leave those rights within the bankruptcy itself for disposal as one of the assets of the bankruptcy.

Mr. BLANCHETTE. Then that is something that the Government does not have to pay for and it reduces the price. I don't know the figure.

Mr. ADAMS. Let me tell you specifically what I want, because several of you are correct when you mentioned a consensus emerging around the country from a whole series of sources as to what might be done.

I will tell you very quickly what that consensus is, which you probably know I suggested last Friday; it goes this way: That the six roads in bankruptcy would proceed as the court required with whatever type of staged liquidation is necessary, but that there would be created two potential purchasers for those assets. One step would be to authorize, if further authorization is necessary, Amtrak to purchase the Comdor system as is suggested in your testimony and that this become a passenger-type operation.

I would suggest to the committee, and as I say this is just a consensus approach, that we pass the Surface Transportation Act and we make loan guarantees available to Amtrak for potential purchase or lease, so we will need to know what it cost for a lease which would stop the bleeding, as Mr. Langdon has mentioned. The second step is the creation of a self-liquidating quasi-governmental corporation similar to Amtrak, which some of us call it the Northeast Railroad Corp., which would at first sell voting stock to the Government only, with common stock to be offered to trustees of the various bankruptcies, for the creation of a rail service.

Now, this proposal comes from what the Department of Transportation has suggested and what the ICC has suggested, so I am not saying these ideas have sprung fullblown from anybody's mind, but they are a consensus, and we need to know what kind of costs are involved.

The Department of Transportation has indicated they generally believe common stock could be offered to the various bankruptcies and they would exchange their assets for this stock and then the assets could be used in borrowing upon them in order to make the corporation, a freight corporation, viable.

Amtrak, of course, would operate just on this basis.

Now, gentlemen, if common stock were offered to you for assets, would this common stock, beyond a liquidating government preferred, do you think you gentlemen could get it through the court.

Mr. BAKER. We have not been always perfect in our guess of what we can get through the court unfortunately.

Mr. LANGDON. Sir, how would labor be taken care of?

Mr. ADAMS. There are three proposed alternatives. One is that under the Railroad Retirement Act which we are presently considering, more benefits would be granted in terms of retirement for protection of those individuals.

The second is that those that wished to make claim against the bankrupt estates would be allowed to do that also in the event that they wanted severance pay.

The third would be there would be a negotiated contract with both Amtrak and the new corporation with the unions that are presently involved.

The fourth would be that if under this system, the labor problem could not be handled by attrition and by negotiation with the various parties that are involved in it, then the Government would have to come in with funds to help fund that cost of the new corporation, probably in the form of loan guarantees and sale of preferred stock.

In other words, the problem that the committee has and the problem that all of us have working with this, we can't get from anyone any definite figures as to what each one of these costs will be. We are trying to create a process, and then give enough time so that the process can work, so that each of these things does not spring full blown by fiat from anyone but is negotiated by the people who are operating the system, by the people that are working for the system, and by the financial community which will lend to the system.

Mr. LANGDON. May we have a couple of days to back away and consider it and submit it?

Mr. ADAMS. Yes, I would be most happy if you submit it for the record. The information is the cost of that corridor on the basis I outlined, and we need to know whether or not, or on what basis you would make recommendations as to potential disposal of core assets.

I might indicate in this we would accept the Department of Transportation's suggestion, and when I say "we" I mean the consensus in the main, because the ICC takes so long to designate anything, that there would be a point to point designation by the Department of Transportation and review by ICC with public hearings as to whether or not the actual designations were correct and on the basis of this plan, which we would ask Congress to authorize, there would be offers made to the six bankruptcies all at one time in order to obtain essential rail service.

That is with the alternative at the end of it that those communities that wished to maintain their own service or those small lines that wished to maintain their own service could do it on a shared basis of cost as was done with Amtrak or conform their own small lines if they wished to do it or you could continue to operate assets that were left in your bankruptcy. It has always been contemplated, that each of the various reorganizations, after an essential system was designated and bid for, could, of course, operate with the assets they had remaining in any fashion they wished.

Any estimate you could give us on labor costs we would appreciate. [The following information was received for the record:]

LABOR PROTECTION COSTS

The attached memorandum, entitled "Labor Protection Costs," is the most recent estimate made for the Trustees with respect to this matter. A more refined estimate is being prepared in connection with the preparation for the hearing before the Reorganization Court on June 2, but will not be available until approximately mid-June.

MEMORANDUM ON LABOR PROTECTION COSTS

The Trustees' best estimate of the amount of labor protection costs involved if the Penn Central were permitted to move immediately to an 11,000 mile system, with the crew-consist reductions which the Trustees have proposed, is \$600 million. Of this amount, approximately one-third would be required in 1973 and the two-thirds in gradually diminishing amounts through 1979.

The estimate is based on the following premises:

1. Of the employees rendered unnecessary by the streamlining of the system and crew-consist reductions, approximately half would accept severance pay based on 16½ months' wages, and the other half would insist on their right under existing contracts and state statutes to job protection.

The total figure would be more if fewer than half of the employees accepted severance pay, and would be less if more than half accepted severance pay.

2. No additional protection obligations are imposed by Congress.

3. Passenger service will continue at its present level and will be fully compensated.

4. The latest published freight-traffic-growth projections prepared for the Trustees will be realized.

5. Wage escalation will continue through 1979.

6. The attrition rate will conform to the railroad's past experience.

Mr. ADAMS. I am sorry, Mr. Chairman, I will hurry as quickly as I can. Can you supply us also with a summary of where the bonded debt is tied with the right-of-way and facilities of the court?

Mr. LANGDON. Yes.

Mr. ADAMS. We would appreciate receiving that.

[See "Valuation of the Northeast Passenger Corridor," p. 289.]

Mr. ADAMS. If you were to sell, would the proceeds of this sale or a substantial lease which you could divide, combined with the other nontransportation assets that are in it, would it be sufficient to satisfy the creditors other than the potential labor charges, so that you could reorganize what was left of the railroad?

Mr. BLANCHETTE. I believe the answer to your question is "No", sir. If you could sell the corridor, and dispose of other nontransportation assets, you would satisfy a large percentage of the creditors' claims. You would still have other creditors remaining; namely, secured creditors off of the corridor and secured creditors who didn't have security or nontransportation assets. Therefore, unless something were done with the remaining freight railroad, to create viability, to a status rather of viability, these two steps would permit a reduction of other debt but would not give the remaining freight railroad the attributes which Mr. Langdon read in the trustees' statement on page 12 of what would be needed.

Mr. ADAMS. In other words, you tell me those assets won't go out clean?

Mr. BLANCHETTE. Well, those assets could not be used to fund the railroad, for example, the freight railroad that remained, unless that freight railroad were able to meet the tests that are set out on page 12 of the testimony.

Mr. ADAMS. I understand. All right, now, could you also supply the committee, because there are two aspects to how soon this liquidation might occur, with your projections of cash flow through the first quarter of 1974? It is my understanding and, Mr. Moore, you can correct me if I am wrong, that the Penn Central cash flow position generally becomes most difficult in the first or the so-called winter quarter; is that correct?

Mr. MOORE. That is correct.

Mr. ADAMS. So we would like it through that quarter, so that we know what you are going to be supplying to the judge.

[The following information was received for the record:]

CASH FORECAST—PENN CENTRAL TRANSPORTATION CO.

[In millions of dollars]

	Month ending cash balance	Unpaid withheld tax liability	Month ending cash less tax liability
1973:			
May.....	19.3	11.0	8.3
June.....	29.7	9.4	20.3
July.....	11.8	12.6	(.8)
August.....	2.6	12.5	(9.9)
September.....	10.2	11.0	(.8)
October.....	13.0	11.0	2.0
November.....	6.8	11.0	(4.2)
December.....	12.7	11.0	1.7
1974:			
January.....	6.3	11.0	(4.7)
February.....	(16.2)	11.0	(27.2)
March.....	(9.8)	11.0	(20.8)

Note: The above forecast does not provide for any of the following potential sources of cash: (1) The trustees have petitioned the court for authority to withdraw certain escrowed funds and to issue trustee certificates upon certain terms and conditions. The funds are proceeds from sales of equipment escrowed pursuant to court order No. 366 and interest earned on proceedings deposited pursuant to various orders, \$12.4; (2) The Emergency Rail Facilities Restoration Act (Storm Agnes legislation). It is estimated that the total amount of the loan for which the trustees may be eligible is approximately \$21,000,000. Congress has not appropriated the funds for such loans. The trustees have already spent \$12,500,000 of the amount that they may be eligible for, \$12.5.

Explanation of major factors utilized in preparing the cash forecast for the period May through December, 1973 and the first quarter 1974.

Freight revenues and volume

A 5% effective tariff increase commencing August 1, 1973.

1973 freight revenues are projected at \$1,746.5 million compared to \$1,606.5 million for 1972. An increase of \$140.0 million or 8.7% over 1972.

Freight Carloadings for 1973 are projected at 5,574,000 compared to 5,344,000 for 1972. An increase of 230,000 or 4.3%.

Freight revenues for the first 4 months of 1973 are \$556.9 million or 1.1% above last year. Carloadings for the same period are 1,768,000 or 2.0% above last year.

Amtrak

Provides for subsidy payments under present contract terms.

Employment

First quarter 1974 projected at 78,600 people.

Wage rates

Provision made for January 1, 1974 wage increases.

Payroll taxes

Provides for Tier II Railroad Retirement obligation commencing October 1, 1973 and an increase in tax base January 1, 1974 from \$10,800 to \$12,000.

Health and welfare

Adjusted to reflect an increase of 7% on February 28, 1974.

Equipment rents

Assumes incentive per diem year round.

We call attention to the fact that our estimate constitutes our best judgment, but cannot be binding upon the other parties in our reorganization proceedings or upon the Court. Accordingly, we believe that any restrictions on the use of the funds which would fetter the ability of the Court to continue the railroad in operation and to manage the erosion problem might frustrate the purposes for which the appropriation was made.

Mr. ADAMS. The final question I have is this:

Assuming that a type of liquidation were to occur, have you described to the judge or have you prepared yet a plan as to how you believe this would occur?

In other words, what would stop first? I gather from both your public comments and your testimony you would not abandon lines but you would simply, by order through the judge, stop running trains in certain areas? Is that correct and, if not, tell me where we are with this? You see the reason is that, as Mr. Harvey said, July 2 may, to the business community seems a long way away, but to the Congress, July 2 is the twinkling of an eye.

Mr. HARVEY. Will you yield?

Mr. ADAMS. Yes.

Mr. HARVEY. Excuse me, were you waiting for an answer?

Mr. ADAMS. I was, but go ahead and ask your question and you can be thinking about the answer to my question, Mr. Blanchette.

Mr. HARVEY. I want to ask Mr. Blanchette, legal counsel, a question which has been discussed, I understand, over in the Senate. That is, does the Federal judge in bankruptcy has authority to order the trustees of the Penn Central to shut down by October 1 if they do not come up with a reorganization plan suitable to the court by July 2? The theory has been advanced that section 77 of the Bankruptcy Act gives the judge only authority to disapprove of the reorganization plan submitted to the court.

Have you considered this?

Mr. BLANCHETTE. Yes, in considerable detail, sir. I believe the advice you have is this: That under the statutory law, railroad corporations, as well as banks and insurance companies, cannot avail themselves of what is called straight bankruptcy, that is, the procedure by which you wind down and sell off assets and distribute for the benefit of unsecured creditors. Straight bankruptcy is not a remedy that deals with secured creditors.

Banks, insurance companies, and railroads are the principal companies that are not permitted to go under straight bankruptcy, yet we all know that banks have gone out of business. We believe that insurance companies have gone out of business and we believe that where the continued loss is such that the property is being operated only in the public interest, or to serve the public, at the expense of the owners of the estate, that is, as a matter of the fifth amendment, as distinguished from statutory law, the court has inherent jurisdiction to do that.

I read from the Supreme Court of the United States in *Railroad Commission v. Eastern Texas Railroad*, 262 U.S. 79, and I think it pertains to a question asked earlier and this is what the Supreme Court of the United States said:

A railroad, although devoting its property to the use of the public, does not do so irrevocably or absolutely and if at any time it develops with reasonable certainty that future operations must be at a loss, the company may discontinue operating and get what it can out of the property by dismantling the road. To compel it to go on at a loss or to give up the salvage value would be to take its property without just compensation.

That is the authority for the proposition we have asserted.

Mr. HARVEY. What is the year of that decision?

Mr. BLANCHETTE. That decision is 1924 and finds support in 274 U.S. 513 (1921), a predecessor case, and in 1972 in the *City of New York v. United States*, and in 1969 in 304 Federal Supp. 793 in the *New Haven* case and in *Brooklyn Eastern Terminal v. United States*, 1969 and another, *Jay Street Connecting*, in 1959. I believe it was upheld in the *New Haven* case in September 1970, as well as in the predecessor case, I believe 1969, the *Penn Central* merger case, and upheld by Judge Anderson, later sustained by the Supreme Court, in July 1968.

Mr. HARVEY. What you are telling us, if I understand correctly and I won't take any more of your time, Mr. Adams, is that in your opinion the judge does have authority to order this?

Mr. BLANCHETTE. I don't know whether it is October 1, sir, or what the date is, and that is a matter of discretion, but I believe the Court is empowered to administer the Constitution of the United States and empowered to apply principles by the Supreme Court. The answer to your question, Mr. Adams, is we have not discussed with the Court in advance of the hearing the suitable proposals for liquidation or other disposition, but we have filed two petitions of record, both based on a wasting assets theory and one which would permit us to suspend operations on the 5,000 miles of line which are clear losers of the 20,000 miles on Penn Central.

The other and that matter, by the way, is under advisement by the court and has not been set for hearing, but the other is to phase out, as the court directs, all uncompensated passenger service. The court has not acted on that except to refer the matter of Amtrak compensation to the Interstate Commerce Commission for a report back on June 15 of this year.

Mr. ADAMS. Thank you.

On nationalization how much would it cost to nationalize, Mr. Blanchette, the Penn Central Railroad under the provisions of the presently existing Supreme Court law, which I understand is defined in the *Hudson Tube* case and a later case? If you have a later one, tell us.

Mr. BLANCHETTE. In the *Hudson Tube* case, assuming that the nationalization encompassed the Barclay Hotel and Arvida and Buckeye Pipeline, you would be talking under the *Hudson Tube* case of somewhere in excess of \$10 billion and perhaps \$14 billion.

Mr. ADAMS. \$10 billion to \$14 billion. Have we got the assets of just what the trains ran on? Can you give me a figure?

Mr. BLANCHETTE. Very little less, very little less.

Mr. ADAMS. We are talking then of \$10 billion to \$14 billion. Can you harden the figure?

Mr. BLANCHETTE. That is on the *Hudson Tube* rationale.

Mr. ADAMS. All I want to know is the cost if we pass a nationalization bill, which is one of the proposals, and may well be one of the proposals suggested if you shut down service over substantial parts of the line or you run out of cash. I will ask you this also, don't your projections show that you will run out of cash in the first quarter of next year if anything happens, if there is a lot of snow?

Mr. MOORE. We will be very close on cash.

Mr. ADAMS. Very close on cash, that is what I understood, very close on cash.

Would you submit that to the committee then please?

Mr. BLANCHETTE. Yes, sir.

Mr. ADAMS. Because we would like to know that figure, because a number of people are going to suggest nationalization, and it is certainly an alternative and we have to tell our colleagues what it is that you think it is worth.

[The following information was received for the record:]

COST OF NATIONALIZATION

The properties of the Penn Central railroad system—that is, those owned by PCTC and the leased lines of PCTC—have been valued by an engineering firm as being worth \$13.482 billion for railroad use on a reproduction cost new less depreciation basis as of December 31, 1970. This figure does not include any value for the mid-Manhattan real estate, the Pennsylvania Company, and non-leased line subsidiaries including various independently operated railroads and other transportation equipment leasing companies. The figure does include some assets which may become unnecessary to rail operation, the amount of which is estimated not to exceed \$.5 billion.

Mr. ADAMS. Would you have any figures on what the other five will cost? Do you know anybody who does?

Mr. BLANCHETTE. They have had studies.

Mr. ADAMS. Whose studies?

Mr. LANGDON. They have had evaluations, I think. I am sure the Reading has, but I am not sure about other railroads.

Mr. ADAMS. You don't know of any published place that this committee can get the figures on what those other railroads would cost?

Mr. BAKER. No, but I would be very surprised if the trustees would not give you that figure.

Mr. ADAMS. In other words we should write to each of the trustees.

Mr. Chairman, I will defer any further questions I have, but I would like to suggest that the committee, either counsel or otherwise, contact the trustees in those six bankruptcies and obtain a figure from them of what it would cost for these transportation assets, if we were to nationalize them, because as I understand the nationalization, we probably have to take all of the transportation assets and I would make that request of the chairman and counsel so we could have them.

Mr. JARMAN. Yes.

Mr. ADAMS. Thank you.

Mr. DINGELL. I think we are going to have to have these other bankrupt railroads in to find out what the situation is with regard to them because I don't see a solution of the Northeast problem lying solely with a solution of Penn Central's problems.

Mr. LANGDON. That is right, absolutely.

Mr. JARMAN. The Chair thinks that is the intent and the Lehigh will be scheduled as of tomorrow as well as others.

Mr. JARMAN Mr. Shoup.

Mr. SHOUP. Thank you, Mr. Chairman.

Mr. Langdon, you referred several times to this being an emergency situation. May I ask you what the plans of the trustees are for posting the crews' consist order?

Mr. BAKER. I seem to be elected. I would like to read this statement because we, of course, were extremely concerned about this whole thing and worked out this statement yesterday.

Absent any development to report to the courts, we would have no basis to ask that our present direction to promulgate be altered. If, however, the estate can be protected against continuing erosion, which results among other things from the cost of excess labor, if the estate can be protected from continuing erosion, that is, on an interim basis, we would have to give postponement of our promulgation serious consideration.

We recognize the benefit which could result if more time were available to all of the interests involved including labor, to work cooperatively toward a fair and feasible solution of the Northeast rail crisis, in which we of course would join. We would, in other words, have to report to the court before June 9 that the Congress would indemnify us against the short-range costs of excess labor and other factors which constitute erosion and also condition our response on the lack of further adverse developments such as regressive State legislation.

That is it.

Mr. SHOUP. Thank you. If I can put that into plain language, you are not planning on promulgating the order at the present time. However, you are reserving the option to if everybody doesn't cooperate with you?

Mr. BAKER. I preface it a little differently. I say we are planning to promulgate on June 9, that is, we extended it the other day, from May 9 to June 9 on our own action, and we would plan to promulgate on June 9, unless there were a situation whereby erosion would be taken care of for an interim period during which we and labor and everyone else could be trying to work together toward a feasible solution for the kind of problems we have all been talking about this morning.

Mr. SHOUP. Earlier in reply to Mr. Adams' question to both of you gentlemen, in fact all three, I thought your answer was that on an independent basis, you could not reorganize satisfactorily to continue operations, that it would take assistance from the Federal Government. Am I correct in that?

Mr. BAKER. It would take assistance in one form or another. Were we freed of these particular burdens under which we legally have to operate would be one way.

Mr. SHOUP. My point is this: We have a big problem in Congress trying to assist you in the Northeast without having another strike. I think it should be quite evident to you that if you attempt to promulgate the crew consist order again, probably the reaction would be the same, and we would accomplish nothing but a waste of our time and your time.

Any savings that you would incur in 1 month under this new crew consist would be minimal if you consider the total picture and all its ramifications. It would be my recommendation that you seriously consider deferring any action of this type until you go before the court on July 2.

Now, for the record also, Mr. Langdon, you speak of the purchase of the right-of-way for the passenger line in the Boston-D.C. corridor, with a freight line being a parallel line. Am I correct that this new line would carry nothing but passengers with no freight utilization whatsoever?

Mr. LANGDON. We understand, sir, that is what has been in contemplation by the Government, a passenger railroad.

In order to provide the kind of passenger railroad that we understand is in contemplation, it would be better to dedicate it to passenger movements and remove the freight operations. As a matter of safety, that is.

Mr. SHOUP. As a matter of safety, is it your opinion as a railroad man that you could not utilize this passenger line for a freight line?

Mr. LANGDON. Maybe Mr. Moore could respond to this better than I can. But let me say this, sir, that the plans of the Government insofar as they have gone informally and as imparted to us, con-

template a speed-up in the service to provide, among other things, a 2-hour train—in place of a roughly 3-hour train between Washington and New York and also a much faster train—from New York to Boston.

Under those circumstances, two things would have to be done. The railroad would have to be largely rebuilt, maybe rebuilding is a little exaggerated, but there would have to be spent an enormous amount of money on the railroad in order to reduce curvature and provide a better roadbed with tracks for higher speeds. Secondly, for passenger speeds of that kind in particular, freight service should not be operated on the railroad at the same time.

Mr. Moore may be able to elaborate on that, sir.

Mr. MOORE. All I could add, right now we are running about 680 trains, that is, freight trains, commuter trains, and Amtrak trains between Washington and New York every 24 hours and that is a tremendous volume of trains.

Mr. SHOUP. If you eliminated all freight from these lines and left it just passenger, how many trains would it be?

Mr. MOORE. Well, in our operation between here and New York, about 60 to 70 percent of it is passenger operation now. It is predominantly passenger operation.

Mr. SHOUP. What does bother me is we are looking at the problem of parallel lines and one of the causes, I think, of the inefficiency or the problem up in the Northeast is we do have many parallel lines. I approach with great caution deliberately moving into increasing the number of parallel lines merely because it is passenger and freight. I just wonder, are we to a point to do that?

Mr. MOORE. I think it has been pretty well proven if you are going to operate high-speed passenger trains, 130 to 150 miles an hour, it has to be completely divorced from the freight operations. For example, the Tokaido Line in Japan is strictly a passenger railroad, no freight trains. In fact, the right-of-way is fenced in. In that way they can operate a tremendous number of passenger trains and give good on-time performance.

The way we are now between here and New York it is next to impossible to get a freight train over the railroad because of the passenger train interference. In addition to that, we have this situation.

Mr. SHOUP. I have ridden between New York and Washington in pretty good time and we seem to be on time; you seem to be doing a pretty good job.

Mr. MOORE. The performance is not as good as we would like for it to be, as far as being on time is concerned. Of course, this number, bear in mind, includes commuter trains as well as freight trains.

Mr. SHOUP. I realize that.

Mr. Langdon, when I asked you the question and I was asking it specifically of you, either you personally or as a trustee, not for a Government position, do you feel that it is necessary to have parallel lines?

Mr. LANGDON. Yes, sir; because I think this situation is unique. I don't think it is the same as putting down another parallel line, which, as you say, in other parts of the country and under different circumstances, has in part at least contributed to the railroad problem. This is a unique situation where there is a very heavy passenger density, traffic density, and in order to accommodate it efficiently, there ought

to be a passenger railroad. A passenger railroad would be absolutely impossible under private ownership. In the first place, in the passenger operation itself, there is inherently a deficit. So it would have to be Government ownership and Government operation in order to have this come into being.

Now the freight, we have looked into the proposition tentatively, of operating the freight trains at night, at a time when the passenger trains would not be on the railroad, but this is really impossible to do and to accommodate the business. So, yes, it is my recommendation that serious consideration be given, sir, to taking this railroad over as a passenger railroad.

Now in that connection we are going to have to make some provision, of course, for those shippers and services on the railroad itself, reached only by the corridor, who, if this line became a passenger line, would be cut off. We are going to have to make some provision, some provision will have to be made to continue service to them.

Mr. SHOUP. Yes, you made that point, I think, in your testimony. I have one final question.

Mr. DINGELL. May I intercede? This does not have to happen as in a flash flood. It can take place over an orderly period of transition.

Mr. LANGDON. Certainly.

Mr. DINGELL. I get the impression in the thread of thinking somewhere there is an idea or concern it has to be done without an orderly period of transition and I hope the record does not reflect that kind of thinking on the part of anyone because it is not our thinking. ■

Mr. LANGDON. It is only the stopping of the erosion, sir, in order to permit plans such as this to proceed in an orderly way that causes the crisis or emergency.

Mr. BAKER. May I comment before I finish on when I answered Mr. Adams' questions about costs of the corridor? This business of making it a purely passenger line costs a lot more. That may be the desirable aim and sensible thing to do.

Mr. ADAMS. Why does it cost more? ■

Mr. BAKER. Because, let's say you get all of the freight off of the old Pennsylvania Line between Washington and New York, you have to somehow, and say also you put all of that onto the B. & O.—Reading, C. & J. You have to get contact then between the plants, say, between the railroad and the river going up along the Delaware—say, Wilmington and Philadelphia—you have to get those plants that are not now connected with the B. & O. Line. You have to get them over there or relocate them. It is just an additional figure of cost that people should not forget.

Mr. ADAMS. You have a four-line track?

Mr. BAKER. Yes.

Mr. ADAMS. Between New York and Washington?

Mr. MOORE. In some places we only have two tracks, but generally it is two, three, four, and up to six in some areas.

Mr. ADAMS. I think we have to give the operating people a process here and in your report give us the alternatives of what these various things cost so we can let somebody else decide. Thank you.

Mr. BAKER. It can be done, but it takes a dollar figure to do it.

Mr. SHOUP. One final question, Mr. Langdon. You addressed yourself to the bills that have been introduced. I am interested in the materials that have been furnished to us and I think all of the members

of the committee, after proposal made by the president of the Union Pacific Railroad. You have not addressed yourself here and we didn't expect it. However, are you familiar with what I am referring to?

Mr. LANGDON. Yes, generally. They talked it over with us informally and I say with us, but with me and Mr. Blanchette informally before submitting it. It is a proposal that may well deserve consideration. The problem with it is that as presently drafted unless it has been changed recently, there is no provision for immediate help to stop the erosion—while the basic overall restructuring and approach are, in effect, worked out.

Mr. SHOUP. You would feel in the long term, in the long-term approach to the problem, that his proposal though does have merit?

Mr. LANGDON. It is worth studying, sir, and it is a proposal that if they would amend it, as I say, or supplement it by providing some machinery for taking care of the immediate problem that we face.

Mr. SHOUP. I think any legislation we must face has to have it in it. I have no further questions, Mr. Chairman.

Mr. JARMAN. Mr. Podell.

Mr. PODELL. Thank you, Mr. Chairman.

I might say I would like to have directed my attention to the problem of all of the bankrupt railroads in the Northeast, but of course for purposes of this discussion we must confine ourselves to the Penn Central. It would appear to me that you have devoted a great deal of attention in your remarks to the problem of erosion of the bankrupt estates or the problem of existing creditors.

I must say I am more concerned, of course, with those people, the passengers, who require the transportation, as well as the freight to be transported in the Northeast section of this country. I just wondered for a moment, in accordance with your statement that even under any circumstances you cannot conceive of any way of reorganizing this railroad by July 2, 1973, or July 2, 1974, on a profitable basis. Was that your statement, first? Without actual infusion of Federal funds?

Mr. BLANCHETTE. Or a change in the legislative and regulatory matrix that substituted for it.

Mr. PODELL. What change would you feel would be sufficient to permit you to operate this system on a viable basis without Federal funds being infused?

Mr. LANGDON. Sir, if overnight we could go to a 11,000-mile core where, today, according to our studies we are handling over 80 percent of our business, and there was some protection provided by the Government for the employees displaced by that shrinking of the system, and if our passenger services were fully compensated, both Amtrak and our commutation services, and if we were also able to achieve a change in the basic work rules concerning crew consist, whom compensates it, then I think we would be able to generate internally, or in the private sector, the \$600 to \$800 million that is needed to rehabilitate the property.

But, you see, those conditions, sir, are so tough and are not, you know, very likely to be realized, that this leads us then to the conclusion and the recommendations set forth in our statement looking toward the July 2 hearing.

Mr. PODELL. Well, obviously, even should those hopeful aims that you have just enumerated be realized, if you get reimbursed from

Amtrak, we are going to have to pay for it in any event, because Amtrak will never have the money to pay for it, so indirectly you are coming to us for the money. If the Federal Government does allow for the displaced employees, again, the Federal Government is going to have to provide the money, so the answer seems to be that even under utopian conditions there is no way that the railroad can operate as a functional, viable railroad without Government assistance; isn't that right?

Mr. LANGDON. That is correct.

Mr. PODELL. OK. Now, I am not so sure that I like the idea of pouring in \$600 or \$800 million, plus \$65 million that Amtrak owes you that we are going to have to give you in any event, merely so that the estate of this railroad is going to find the estate protected. To me the value of an estate is its current market value and the current market value of the owners of this estate is quite low. It is not nil really, because it is worth what it is worth and it is not worth very much, and July 2 you are going to be ordered into a liquidation.

Wouldn't it appear to you that the only solution in this case is for the Federal Government to step in and take over the program of Penn Central and the additional six railroads that are in bankruptcy in the Northeast, and through some mechanism operate them. I don't know if I am sure about a sale and lease-back and all of these fancy terms, but generally speaking just take over the problem and admit that it is going to cost us the money we are going to have to use to run it; isn't that the best solution?

Mr. LANGDON. I think that would be much more expensive, sir, than the solution that we recommend. I think in the long run the Government would be spending a lot more money doing it that way than proceeding along the lines we suggest.

Mr. PODELL. Along the lines suggested, you are talking about giving an additional \$600 to \$800 million within the next few years as a temporary measure and then admit readily that there is even then no way you are going to succeed.

Mr. BAKER. I don't think we suggested that it continue, but I think the idea is that with the other conditions, then it would be able to be viable.

Mr. PODELL. Well, I thought the gentleman just stated that, assuming the utopian conditions which could never possibly be realized, even then you would not be able to succeed.

Mr. LANGDON. No, I said, sir, under those circumstances, to wave the wand and produce the conditions that I described, then we think we could finance the \$600 or \$800 million reconstruction or rehabilitation of the plant without any Government help, but as I say, the conditions are so tough that probably they are not going to be realized in time.

Now, sir, may I make one suggestion though that the problem before you and all of our figures pertain to the Penn Central considered as an entity. There never has been, so far as I know, a study of the requirements for help for the entire Northeastern structure. After that has been studied, presumably along the lines of the Commission approach, it may very well be that the overall viability of whatever emerges from the study of the overall problem in the Northeast may be different than when the study is limited to Penn Central.

In short, the treatment of all of these lines together and the elimination of duplicating mileages, and so forth, and so on, could affect the final result of the required Government help.

Now, our suggestion is that we stop the erosion back away and have this overall problem, as suggested by the Interstate Commerce Commission, studied, because only in that way are you going to get the kind of answers that I think are going to bear on the ultimate solution here.

Mr. PODELL. Well, I direct your attention to H.R. 7373, which I just introduced last week, which deals with the entire northeast corridor. I think it states, in effect, that to solve the problem of Penn Central you must solve the problems of all of the northeast corridor railroads. I think we can envision there is presently duplication, overlapping of effort, and this, of course, should be studied.

But somehow I believe also, and here is my major concern, that I don't like the idea of infusing public funds to protect a private estate. If we are going to put our money in, if we are going to put taxpayers' dollars into this railroad, then, by golly we ought to buy the railroad and but it for what it is worth.

Now the evaluation you mentioned in the *Hudson Tube* case I don't think is entirely appropriate. The *Hudson Tube* case at the time it was undertaking, was a viable instrument of transportation, was it not?

Mr. BLANCHETTE. Viable, sir, in the sense it was functioning and rendering adequate service, but not viable in the sense of generating anything like earnings.

Mr. PODELL. But it was not in liquidation at the time?

Mr. BLANCHETTE. It was, I believe, in chapter 10 or a liquidating type of receivership, yes.

Mr. PODELL. That would certainly change the value and perhaps we can give the estate some other stock for the stock they presently have.

One last thing. I see the time is short. What is the extent of the nontransportation holdings of Penn Central today in terms of value? I know you have tried to spin off some of that real estate and have had problems with it. To what extent do you have additional holdings outside of transportation assets?

Mr. LANGDON. We have considerable, sir. They are all, of course, hooked up to the ears and we would like, if we could, to supply that information for the record, too, in some detail. We can do that.

Mr. PODELL. Could you do that and also advise us as to, should you be able to do so, what would you think it would yield in terms of dollars? Would it be profitable or unprofitable?

Mr. LANGDON. Yes, we have the evaluations done on those properties. Of course, as you suggest, we have tried to dispose of some of them without any success really.

We will be glad to supply that information.

[The following information was received for the record:]

ESTIMATED VALUE OF SELECTED NONTRANSPORTATION PROPERTIES

The primary non-rail subsidiary is the Pennsylvania Company, which PCTC valued recently at \$223 million. However, the stock of Pennsylvania Company is encumbered by the lien of a \$300 million bank loan in default. In addition, there are substantial real estate holdings of Penn Central and its subsidiaries not now

used in or which may not be needed for rail transportation including, for example, the mid-Manhattan properties, the value of which is estimated to total approximately \$1 billion.

Penn Central has an equity interest in other miscellaneous non-transportation companies valued at more than \$100 million.

Mr. BAKER. You would be particularly interested in the amount of net over any underlying mortgage that we might get for other purposes.

Mr. PODELL. Well, the current fair market value of the real estate obviously.

Mr. BAKER. You would also like to know the encumbrances on it because it would, if it simply goes to the mortgage holder, not help this problem particularly.

Mr. PODELL. Did you ever do anything about the 20 acres on the New Jersey shore directly across from 42d Street, you have about 20 acres there of land.

Mr. MOORE. We have moved. You are talking about where we had all of the freight forwarders and the service between Greenville and Manhattan?

Mr. PODELL. I would say it is right across the Hudson River between 40th and 70th, something of that kind. You have a tremendous expanse of real estate.

Mr. BAKER. I think it is of interest to the State of New Jersey.

Mr. PODELL. It is being negotiated at the present time as I recall.

Mr. BAKER. Then we just put on the market the old Greenview property further down the river.

Mr. PODELL. It ought to be a valuable piece of property. The hour is late and I don't want to take up any more time, Mr. Chairman.

Mr. JARMAN. Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Chairman.

Mr. LANGDON, in your statement on page 4, you indicated that the financial position of the railroads has been so precarious for a long period of time that the funds are unavailable for adequate maintenance of plant and equipment. Can you give me a dollar figure as to how much money you are running in deficit for the past 3 years so we can know here how precarious it is?

Mr. LANGDON. I can give you a figure, sir, that includes the makeup maintenance over a period of 6 to 8 years that we think is necessary to restore deferred maintenance that goes way back some 20 years almost in certain cases. The property of many of the constituent companies of Penn Central has not been properly maintained.

On the track the figure, sir, is \$435 million. Then, in addition to that, \$45 million is for equipment, where we want to speed up the repair of unserviceable freight cars. In addition to that, we have about \$120 million that we would like help on for making capital improvements that have not been made and cannot be included in our program as we look forward to the next few years.

Actually, the property has been starved for many years on maintenance and on capital improvements and this, of course, is serious.

Mr. BAKER. Could I suggest, Mr. Congressman, that Mr. Moore comment on your question in regard to safety, which I think you would also be interested in?

Mr. METCALFE. I am primarily interested in dollar figure. Naturally, I am vitally interested in a safety figure, but right at this moment I

I am more interested in the dollar figure. This \$595 million, as I add up the figures given to me by Mr. Langdon, you say that is over a period of 20 years

Mr. LANGDON. This represents, sir, the amount of money that, according to our calculations, would be required to make up the deferred maintenance that has been going on for a long period of time and it would be made up over a period of 6 to 8 years and that would be the aggregate amount, that on the track and for equipment that would be required for the catchup.

Mr. METCALFE. How many members are there on the board of trustees for Penn Central

Mr. LANGDON. Three, sir.

Mr. METCALFE. Three. What is their compensation per annum?

Mr. LANGDON. Mine is 95,000 and Mr. Baker's is \$40,000.

Mr. BAKER. I am on a two-fifths time, my compensation is \$40,000. And Mr. Bond is on slightly less than that, his compensation is \$36,000, or \$34,000, excuse me.

Mr. METCALFE. Now, were you three gentlemen also a part of the trustees 3 years ago?

Mr. LANGDON. We were the original trustees, sir.

Mr. BAKER. We came in after the bankruptcy.

Mr. LANGDON. And Mr. Wirtz, too, was the fourth trustee as of the time right after bankruptcy, but he resigned in a year, December of 1972.

Mr. METCALFE. You indicated also that, I think this is in the form of a recommendation for a consideration that the mileage paid to six be reduced from 11,000 miles of railroad, or from 15,000 to 11,000 and if you do reduce the mileage, would you not, in fact, compound your problem, because you therefore would not have customers and, therefore, could not render the services that are available and would it not place you in more of a financial precarious position?

Mr. LANGDON. Sir, I think the answer to that is, "No." But let me explain that, in the case of the 11,000-mile railroad, it is the result of finding, starting with 20,000 miles, which we have now. That part of the railroad where the earning power is maximized and to the extent that you go beyond 11,000 miles, earning power tends to be reduced, and to the extent that you go less than 11,000 miles the earning power also tends to be reduced.

The 15,000-mile core, on the other hand, uses as a starting point the 20,000 miles that we have now and eliminates only those branch lines and other lines that are being operated today at a substantial loss.

Now, we recognize always, in the case of any branch line that is operated at a loss, that if the shippers or the communities or the States or anybody is interested in making up the loss, and making us whole for that operation, we would be glad to continue service.

You know, it is a surprising fact that on the Penn Central the revenue level per mile of line and the traffic density per mile of line are the lowest of any major railroad in the East and one of the contributing reasons is that we have so much mileage where there is low density and there is really no reason for the continuance of rail service.

Mr. METCALFE. Are you suggesting then by reducing the mileage from 15,000 to 11,000 that you compact that and, therefore, the rates would then automatically be increased?

Mr. LANGDON. The rates, sir?

Mr. METCALFE. Yes, the rates.

Mr. LANGDON. No.

Mr. METCALFE. Your revenue?

Mr. LANGDON. Oh, per mile of line, yes.

Mr. METCALFE. It would automatically increase?

Mr. LANGDON. Well, yes, that is right, because in effect by cutting the railroad in half, we would retain according to all of our computations more than 80 percent of the business so this would give a revenue mile per line naturally on a much higher level than is the case at the present time.

Mr. METCALFE. I have two further questions because of the time factor and this one I would like to direct to Mr. Blanchette.

Has the court been given authority to order abandonment without first Penn Central receiving ICC's approval?

Mr. BLANCHETTE. Not under normal circumstances.

Mr. METCALFE. What is your problem? I know it might not be fair to ask you the question, what you think the court will do.

Mr. BLANCHETTE. I think this: The Interstate Commerce Act prohibits any railroad or trustee from abandoning a line without obtaining the consent of the ICC. Where the continuation of substantial lines runs afowl of possible constitutional safeguards, I believe the court has the power, on that ground, to suspend the operation on a temporary basis and then give the ICC the opportunity, and this is just to stop the blood from draining, an then go to the ICC under the Interstate Commerce Act for a permanent abandonment.

Mr. METCALFE. I know that we have a bell, but maybe you can answer this question very succinctly, Mr. Langdon. You are proposing that the trustees retain the freight and then try to dispose of a particularly—particularly the Amtrak passenger services. Is that oversimplifying it?

Mr. BLANCHETTE. This is on the line between Washington and Boston.

Mr. METCALFE. The corridor, yes, sir.

Mr. BLANCHETTE. Yes, sir.

Mr. METCALFE. That is your proposal?

Mr. BLANCHETTE. Yes, sir.

Mr. METCALFE. Thank you very much and thank you, Mr. Chairman. I have no further questions at this time.

Mr. JARMAN. Mr. Adams, any further questions?

Mr. ADAMS. No thank you, Mr. Chairman.

Mr. JARMAN. Gentlemen, we very much appreciate your being with us and helping us to make this record as we all deal with this very difficult problem and the committee will be in touch with you as the hearing develops. The subcommittee will stand adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 12:25 p.m. the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, May 9, 1973.]

1. The first of these is the fact that the
 2. of the system is not a simple one, but
 3. a complex one, involving many factors
 4. which are not yet fully understood.
 5. The second is the fact that the
 6. of the system is not a simple one, but
 7. a complex one, involving many factors
 8. which are not yet fully understood.
 9. The third is the fact that the
 10. of the system is not a simple one, but
 11. a complex one, involving many factors
 12. which are not yet fully understood.

NORTHEAST RAIL TRANSPORTATION

WEDNESDAY, MAY 9, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. John Jarman [chairman] presiding.

Mr. JARMAN. The subcommittee will please be in order.

The subcommittee continues today its hearings on the bills that provide for the continued operation of the Penn Central, consideration of problems dealing with the northeast corridor, problems in general to railroad operation in the country, to legislation creating and setting up surface transportation acts and other bills.

Our first witness this morning is our colleague on the Interstate and Foreign Commerce Committee, Congressman Bob Eckhardt of Texas.

STATEMENT OF HON. BOB ECKHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ECKHARDT. Thank you, Mr. Chairman. I should like to ask permission of the committee to make my statement informally, if I may.

Mr. JARMAN. Without objection, you may.

Mr. ECKHARDT. Mr. Chairman, on August 7, 1972, when it appeared clear that the Penn Central Railroad was not able to bail itself out and was seeking again to come before Congress for loan guarantees, I introduced legislation to put a stop to the continuing Federal nursing of that private corporation.

Then, on January 3, I introduced House Joint Resolution 50, in this session of Congress, which did, I thought, approach the question in a most conservative way. I understand there has been some discussion of House Joint Resolution 50 by the trustees of Penn Central in which it has been described as the extremist of the bills, but House Joint Resolution 50 is, in my opinion, the conservative way to afford an alternative. House Joint Resolution 50 has never called for mandatory creation of a Federal corporation to operate Penn Central. It would merely make that option available to the Government.

The bill is:

To provide for the continued operation of the transportation properties owned or operated by Penn Central Transportation Co. to protect the security interests of the United States in such properties and to provide the payment of just and reasonable compensation therefor.

After its "whereas" clauses, it provides that:

There is hereby established a Commission on Railroad Transportation in the Northeast. The Secretary of Transportation shall serve ex-officio, as chairman of the Commission. There will be six other members of the Commission consisting of the Chairman of the House Committee on Interstate and Foreign Commerce and two members of that committee designated by such chairman and the Chairman of the Senate Committee on Commerce and two members of that committee designated by such chairman, and no member of the Commission shall receive additional compensation, et cetera.

Then it provides:

It shall be the duty of the Commission on Railroad Transportation in the Northeast to keep itself closely informed on all developments in the Matter of Penn Central Transportation Co. and whenever the Commission finds there is no reasonable prospect of achieving a traditional income based reorganization of Penn Central, this shall trigger creation of a Federal corporation known as the Northeast Transportation Authority, the Secretary of Transportation to serve as ex-officio chairman of the board of directors and four additional directors to be appointed.

Now, it seemed to me at the time of the introduction of the predecessor bill in the last Congress and the introduction of this bill in this Congress, that it was absolutely essential for the United States to put itself in the position of exercising the option of operating the railroad through a Federal corporation. Now, I know that since then there have been several other suggestions, as, for instance, the Hartke approach, which I believe is also in the Adams bill, which would, in effect, take over the roadbed and lease it to a private corporation. But it seems to me that it is absolutely essential to give the United States the reach to do what this bill calls for. This bill does not mandate the taking over of Penn Central at any time, but it gives that reach and that ability to the United States.

I think the key language in the bill is stated in section 11 at the end of page 8, beginning on line 25.

The primary objective of the Northeast Transportation Authority shall be to assure the public the most economic attractive, safe, and useful railroad transportation service that can be furnished while maintaining rates of pay, rules and working conditions for employees at a level not less than that prevailing in the railroad industry in the United States.

It does not assure any greater protection of employees than that which is negotiated between railway management and railway labor elsewhere, but it does absolutely require that the public interest be considered.

Now, I would like to say here that one reason why I think that approach should be available as a viable alternative is because it disturbs me a great deal in a time when highways are being overloaded, at a time when pollution of the air is running at a great rate, at a time when property for right-of-way is becoming more difficult to obtain, that there is talk today of abandoning a great amount of right-of-way, a great amount of access to the cities and towns of the East, and to throw all of that load on the present highway system. It seems to me that this country has gone hog wild on the proposition of hauling both people and freight in relatively small units and that there has to be an end to this trend at some point; and I think that there is a public concern about this question, not just a question of what constitutes a viable going private corporation operating railroad. We might as well face the proposition that today there is no transportation system that

operates as a laissez faire operation in the pure Adam Smith sense. The trucks have their roadbed furnished to them. Of course, they contribute to the payment for that roadbed, but, in addition, persons driving on city streets who may never get on a highway help contribute to the cost of building that right-of-way.

We put up money for water transportation because we think it is publicly desirable to have certain alternatives, to create a manner in which the most effective means of hauling the Nation's goods can be chosen from several different sources rather than tolerating monopoly in one mode of movement of goods. We, of course, heavily subsidize airlines, as every member of this committee certainly knows. All of these matters are so familiar to this subcommittee under whose jurisdiction they fall that it is clear, I think, to all of you that the overriding question with respect to transportation is not a question of reconstituting in the transportation field competitive, typical laissez faire business, but rather providing the necessary service for the people of the Nation.

Now, in proposing this bill, I have not suggested that all of the railroads in the Northeast be drawn into this plan. As a matter of fact, I would not favor it. I think there probably should be some flexibility giving the Board the authority to extend the same acquisition authority to other railroads in a like position with Penn Central. I do not, for a moment, believe that the United States should establish a national railroad system owned by the United States and operated exclusively by it. I do not even advocate that that be done in the Northeast.

But I do advocate that the United States, at a time when its chips are down, not merely subsidize a private corporation making its own private policy determination, but that the United States, when it puts money behind such a transportation system, also have authority to run it, also have authority to utilize it as a yardstick, so that the agencies of Government which regulate transportation will have a means of being engaged actively and directly in the business to an extent where they know something about it.

I think it is extremely important that Government, through its regulatory agencies, have some of the same type of expertise that exists on the side of those whom they regulate. It seems to me this is an excellent opportunity to achieve that end and at the same time protect the public interest in Northeast railroad transportation.

I envisage such a corporation as not unlike the Tennessee Valley Authority and the similar power authority for the Columbia Valley as respect the power industry at large in the United States. Though there was a time shortly after the creation of those agencies in the New Deal that private business pointed these out as dangerous movements toward socialism, certainly they have not encompassed and covered anything like the majority of power production in the United States, but these authorities, plus the REA, have afforded a kind of expertise in the area of power, that it seems to me could be afforded by creation of a system of the type that is suggested in H.J. Res. 50 with respect to railroads.

Now, I do not propose this bill as anything like a definitive and final legislative mechanism for accomplishing the end advocated here. I do not present it as one which should be adopted to the exclusion of other proposals before this subcommittee. I respectfully suggest that this

subcommittee consider this bill and other bills, looking toward the creation of such a yardstick corporation.

I think the committee for their patient hearing of my views on this subject.

Mr. JARMAN. We appreciate your being with us to help make the record on this subject and your bill will certainly be one of the major considerations as we work on this problem.

Mr. ECKHARDT. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Dingell.

Mr. DINGELL. I would like to commend him for his usual excellent presentation and his comments have been most helpful to us. His bill is most carefully thought out and in fact, I join in the sponsorship. It is a most admirable presentation.

Mr. ECKHARDT. Thank you very much, Mr. Dingell, for an overly generous assessment of my statement and for your joining me in bringing this bill to the House.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

We also welcome our friend from Texas here. He always gives a thorough, thoughtful presentation and this indeed was a very thoughtful one on a very difficult subject matter as well.

I notice that your bill has open ended authorization both for creation and staffing of the authority and for the conduct of the railroad operation by the authority. Can you give us a suggested cost figure?

Mr. ECKHARDT. Well, the difficulty in getting a figure there was that this bill, as you know, was introduced in the last session as a standby authority. Having been introduced on, I believe the first day of his session, it was again in the nature of standby authority. The question is whether or not the creation of a corporation to actually run Penn Central would be triggered. If it were triggered, of course the costs would be quite large. It would be somewhere in the neighborhood of, for instance, the cost of highway construction for 3 years. I don't think it is so inordinately large, considering aid to other modes of transportation and considering that we are talking here about capital investment.

Mr. HARVEY. What figure are you talking about?

Mr. ECKHARDT. I understand this committee as heard figures around \$10 to \$14 billion.

Mr. HARVEY. That is for all of the capital assets?

Mr. ECKHARDT. That is right. Of course, that is not envisaged in this bill unless all of the capital assets have to do with operation of the railroad. The bill says that if the process of purchasing the railroad is triggered, then the first thing the Government does is determine what it desires to take over as necessary to the operation of the railroad. I think those figures would be the outside figures, but I simply throw them out as something to indicate a ball park figure if the processes of the bill were ultimately triggered.

Mr. DINGELL. Will you yield?

Mr. HARVEY. Yes.

Mr. DINGELL. This particular member of this particular committee takes that particular figure of \$10 to \$14 billion with a grain of salt.

Mr. ECKHARDT. I was merely using the widest analysis of the matter.

Mr. HARVEY. What figure did you have in mind for creation and staffing of the authority? I note you had not named a figure for that in the bill.

Mr. ECKHARDT. Yes; that is in there and I frankly do not have a figure. I think that would have to be something that would come from agencies of the executive department that could give us some measure from other operations of other agencies of the same nature.

Mr. HARVEY. I thank you, Mr. Chairman, and my colleague.

Mr. JARMAN. Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Chairman.

I want to commend my distinguished colleague for his most profound presentation, which he has always been capable of evidencing. I am very much impressed with his presentation.

I do need some revealing clarification, Congressman Eckhardt.

As I understand your first proposal that there would be a Northeast Transportation Commission composed of two members appointed by the Commerce Committee of the House and two members proposed by the Commerce Committee of the Senate and as I recall, you said the other member would be the Secretary of Transportation; right?

Mr. ECKHARDT. Yes; that is the source of the appointments.

Mr. METCALFE. What would be their responsibility?

Mr. ECKHARDT. Their responsibility would be a policymaking responsibility to determine whether or not the process of creating the Federal corporation would be triggered.

Mr. METCALFE. All right, now then, if they decide that the Federal Transportation Authority should be established, would you again reveal who would compromise this Federal Authority?

Mr. ECKHARDT. Now that would be a different group because it would have a different objective. It would be totally administrative. The first group is really a policy group with its relation, well, I mean it is related to the kind of thing our committee does on this side and the comparable Senate committee does on the other side. Also, it seemed to me in making that policy it would be very important to have the Secretary of Transportation as the ex officio chairman of such commission. But, of course, persons of this nature are going to be concerned with their ongoing policy duties and it would be, I think, very inappropriate to put them in executive positions.

When the Federal corporation, called the Northeast Transportation Authority, should go into effect, if it did go into effect, you would use the Secretary of Transportation, as, again, the ex officio chairman, which gives a certain continuity, and the Board of Directors of the Northeast Transportation Authority would consist of four additional directors to be appointed by the President. There is no restriction on the President with respect to that appointment.

Mr. METCALFE. And the Transportation Authority may decide to take over the railroads; is that your proposal?

Mr. ECKHARDT. Well, if it goes into effect, the decision has already been made by the Commission on Railroad Transportation in the Northeast to do so. I think it might help the bill if a certain degree of discretion with respect to the extent of taking over certain properties in accordance with a schedule were given to the Board and also perhaps a certain discretion with respect to other railroads in like condition, which would make it somewhat approach the Podell bill.

Mr. PODELL. Will you yield?

Mr. METCALFE. Yes, I yield.

Mr. PODELL. Your bill restricts itself to the Penn Central, does it not?

Mr. ECKHARDT. That is correct.

Mr. PODELL. Which is the major difference between yourselves and the one I introduced, H.R. 7373?

Mr. ECKHARDT. Yes, sir.

Mr. PODELL. Yesterday there was testimony here that the cost of acquiring the properties of the Penn Central alone would be between \$10 and \$14 billion. Do you have any comment to make on that?

Mr. ECKHARDT. Well, I rather agree with Mr. Dingell, who says he takes that with a grain of salt, which would also range in the billions.

Mr. PODELL. I accept that same grain of salt, by the way.

Mr. ECKHARDT. But even assuming it did cost that, that would be about in the neighborhood of our expenditures on highway construction for, say, 3 years. I mean, we are talking about a capital investment here. We are talking about something that is a payment for the acquisition of capital property. Of course, that is an impressively large figure, but when we consider how much over a period of time we subsidize other modes of transportation, the figure even at that perhaps exaggerated level, though impressive, is not shocking.

Mr. PODELL. Would you have any objection to considering the expansion of the language of your bill into the entire Northeast corridor, which would bring it more in keeping with mine?

Mr. ECKHARDT. No, I think, as I suggested a little earlier, it seems to me there should be discretion in the Board to expand it. I would not, however, favor taking over all railroads in the Northeast corridor. I am concerned with those in like circumstances with the Penn Central.

I feel that there has been the best experience with respect to the railroad situation, that it probably has been that of Canada, with private enterprise running alongside governmental enterprise. But I don't ask for that much. I don't think we need that much in this country.

After all, most of the railroad operations in this country are not at all in the same situation as those typically existing in the Northeast. And the "chuckout" of a private enterprise operating on a workable basis for an entirely new system unexplored and unimproved, it seems to me, would be a mistake.

Mr. PODELL. If you will yield further, Mr. Metcalfe, are you convinced in your mind if we were to give to the Penn Central \$500 million or \$800 million or \$1 billion in the next few years, there is no possible way that they could make a viable railroad work on a profitable basis?

Mr. ECKHARDT. Not without undercutting service and standards of wages and working conditions.

Mr. PODELL. Thank you, sir, and thank you, Mr. Metcalfe.

Mr. METCALFE. Congressman Eckhardt, traditionally one of the problems with the railroads, with the exception of the last bill we had where there was mutual agreement, has been the question of agreement between management and labor. Does Resolution 50 go to the question as to pension rights and to the cost of operating the railroad itself?

Mr. ECKHARDT. Yes, it does and that I think is contained in the language that I read to the subcommittee on pages 8 and 9. It is a condition that it shall be run as an attractive, safe, and useful transportation authority while maintaining rates of pay, rules and working conditions for employees at a level not less than that prevailing in the railroad industry in the United States.

Since this would be envisaged as a governmental corporation, the play of negotiation might not be as free as that which exists in industry generally, so you would have a reverse yardstick here. You would establish conditions on that railroad which would reflect those that exist in others which were not under governmental control. I think that is the only way you could do it and at the same time use the railroad as a yardstick, because, of course, if you operated it quite differently with respect to its wages and working conditions, it would hardly measure what might be done by private enterprise.

Besides that, there is a question of fairness and equity. The governmental railroads should have the same burdens with respect to working conditions as private industry. It should not be put in a position to unfairly compete, for instance, with those northeastern railroads which would remain in private hands.

Mr. METCALFE. I thank the gentleman for answering my questions and I yield back the balance of my time, Mr. Chairman.

Mr. JARMAN. Mr. Shoup.

Mr. SHOUP. Thank you, Mr. Chairman.

Mr. Eckhardt, I would like to compliment you—and I am sorry I realize most everybody else has already used the complimentary words—but I am down the line somewhat.

Mr. ECKHARDT. The witness always enjoys such comments.

Mr. SHOUP. I can't think of any rejoinder, but I might point out you stated something that perhaps we neglected to point out on the committee. Our prime responsibility is to insure transportation service to the Nation and, secondarily, of course, the economics of private enterprise, but our prime responsibility and the reason we are here is to provide transportation service, not to provide guaranteed profits to any private enterprise.

But may I follow through so I have your bill in mind, or exactly what it does, because I have some questions as to legality. As I understand your bill this commission shall be set up and at any time this commission determines that Penn Central cannot continue to operate, that it may just arbitrarily say, we now assume ownership, is this correct? I think that is stated on page 5.

Mr. ECKHARDT. Well, they may determine on their own whether or not this action should be triggered, but if they do take this action, then the acquisition of the properties of the railroad would be substantially the same as those involved in eminent domain procedure. They could not arbitrarily set its price.

Mr. SHOUP. My question is this: In section 5, and this starts at the bottom of page 4 and goes to the top of page 5, in the last part of the sentence it says, when they speak of that property, which is used or useful in conduct of transportation, shall become the property of the United States, and the bill states that the transfer of ownership comes first and then they start negotiating on price. Isn't this the cart before the horse comparing it to the process of eminent domain?

Mr. ECKHARDT. Well, perhaps, but I guess that is about what you do in eminent domain anyway. What you do is get a declaration that the Government is going to take a piece of property and then you bring action in court in which the price of that property is established.

Mr. SHOUP. Would you find that the rules of eminent domain would not or could not be applied in such cases as this rather than saying or setting up new modes of operation?

Mr. ECKHARDT. Well, I don't know. I think that question ought to be considered. It is true that what has been done here in order to prevent any disruption of the continuing operation is to provide for an immediate transfer. What we would hate to see is a situation in which the court, holding the property under bankruptcy proceedings, would have to declare an ordinary bankruptcy sale and then the Government would come in and buy, not a going railroad, but the properties of a dissolved railroad.

That is the real problem involved here. That is the reason a little different procedure needs to be established, I think.

Mr. SHOUP. May I ask you then, if the Government would come in and file today, prior to July 2, if I may say, which is the deadline they have for providing a plan to the court, bankruptcy court, if they would file eminent domain proceedings, would this not preclude just what you are speaking of, that is, buying bankruptcy property?

Mr. ECKHARDT. No, I don't think so, because in the meantime the court is operating under the bankruptcy Act. Really, what this is, is a reorganization at the present time.

Mr. SHOUP. Would you explain this?

Mr. ECKHARDT. First, if the reorganization does not ultimately work, the court would have authority to sell the property and distribute the proceeds to those who were creditors and ultimately, if any were left, and I doubt there would be much, to the owners of the stock. It would seem to me that if you permitted, or if you only provided authority to condemn and purchase the railroads, you would not stay or stop the ordinary processes of the bankruptcy court.

Mr. SHOUP. Does this?

Mr. ECKHARDT. I think it would. I think the Commission could immediately take the properties, but in taking the properties, it would not escape the responsibility under section 7, which provides that "The trustees of Penn Central Transportation Co. shall be entitled, at any time before agreement to section 6 of this act becomes binding, to bring suit in the U.S. Court of Claims and to recover from the United States for the bankruptcy estate of the debtor the just and reasonable compensation," et cetera.

Mr. PODELL. Will you yield?

Mr. SHOUP. I yield.

Mr. PODELL. Mr. Eckhardt, if the court decides to liquidate the estate, the estate will be sold at what is deemed to be its fair market value at that time in a taking or in an eminent domain proceeding, and the amount of money that is paid to the estate would be, again, nothing more or less than what is deemed to be the fair market value of the property. The value which would have to be adjudged is by the proceeding, so certainly it would yield to the estate no more, no less than that it would have gotten under any proceeding. The fact of the matter is the estate has a certain value and the value is probably zero when the first creditors come in and have their satisfaction; there is nothing left.

Mr. ECKHARDT. Of course, the value at the present is pretty great.

Mr. PODELL. That is true, but it is not the value to the creditors that the eminent domain proceeding would be establishing, it is the value of the estate.

Mr. ECKHARDT. Well, I think what you are trying to protect is all property interests in the railroad and if you don't protect them, you don't comport with the constitutional guarantees. I think you are basically absolutely correct, and that is that whether you seize it now and then give the claim in court, or whether you declare you are going to seize it, bring action to acquire the property and get it later, in either case you are paying for the value of the property at that time.

Only one exception there I would make is that it is possible that the value of the operating railroad is greater than that of the railroad after it has been liquidated.

It is not necessarily true in this case, but at least it is possible. The value, though, of proceeding this way, while not hurting the creditors or the owners, has the advantage of assuring there will be a continuity of operation. That is the reason for doing it a little differently than an ordinary eminent domain proceeding. What I suggested to Mr. Shoup is there may possibly be a way to fashion more traditional procedures of eminent domain that would be just as good as this. I would certainly have no objection to that.

Mr. PODELL. If you will yield further, I think from a strictly business point of view, speaking as the Government, the appropriate thing would be to let them fall by "buy-in" at the sale and continue to run the railroad and certainly we could expect that the Government would have other consideration at this time, which is perhaps in taking that there might be some higher value placed, but in either event the rights of the estate are the same.

I think it wouldn't make any difference, because the stockholders will not wind up with a penny, and they don't deserve it either.

Mr. ECKHARDT. As a practical proposition, what would happen, it seems to me, is that the Commission would say that "We are about to make this decision, we can find no other answer." In the meantime, they would be negotiating with the trustees in bankruptcy as to the cost of the railroad. I mean you don't necessarily have to let the hammer drop. The important thing is that the Government has a viable bargaining position because it has an authority and a process by which it is taken. I don't think you have to wait until the thing is on the auction block for the Government to come in and get the best price.

As a matter of fact, I would assume the Government ought to be able to get a pretty good price right now, I think they are in a pretty good bargaining position if they had a mechanism with which to buy.

Mr. SHOUP. My concern is this, whether with this bill they could legally preclude the laws of bankruptcy in existence at the present time?

Mr. ECKHARDT. Sure, we can do anything we want to with the laws of bankruptcy so long as we don't violate the Constitution.

Mr. SHOUP. If you can do that, I wonder if it is necessary to spell it out in the bill rather than to just do it in this manner.

Mr. ECKHARDT. Yes, I see what you are talking about, that you feel that the language sounds harsh in saying the Government will step in and take over. This was my concern, too, when the language

was originally drafted. But when you read in the next sentence that those who own it have a right to come in court and demand all that it is entitled to, as to its worth, it seems to me that harshness is immediately ameliorated by the process involved.

Mr. SHOUP. Going on further in the bill, you get the Government situation, that the Government takes over and they purchase it and adjust the mutual costs and now we have a commission operating the Penn Central Railroad, they become an operating company. In the bill, unless I missed it someplace, this is forever?

Mr. ECKHARDT. Yes, sir.

Mr. SHOUP. Once we are in there, there is no mechanism, no direction in which they should attempt to move it back into private enterprise?

Mr. ECKHARDT. No, sir.

Mr. SHOUP. So this becomes then a mininationalization, the first step of nationalization of our rail system?

Mr. ECKHARDT. I hope not. I don't intend it to be.

Mr. SHOUP. You said there should be written up in the bill, if this happens in some other area, not only in the Northeast, but any place, that the Government can step in and take over the same way.

Mr. ECKHARDT. I had not written it that way. I was suggesting that it might be desirable because of many other situations in the Northeast that seem indistinguishable. But your point in your argument might militate against broadening the bill. I don't want it to be something that will eventually eat up the railroad systems piece by piece when any particular railroad gets into a "broke" situation.

I would think that in many instances the best thing to do is let it be liquidated. That is, let it be bought by other railroads.

Mr. SHOUP. Well, I am wondering, would you have any objection in your bill if something was written where a mechanism shows that a government can get out from running a railroad?

I have not seen too many examples when the Government gets into private enterprise that they have been particularly successful.

Mr. ECKHARDT. I would suggest this, I don't think if the Government gets into it, it is going to get out.

Mr. SHOUP. Unless it is so directed?

Mr. ECKHARDT. Yes; but I really don't think it ought to be so directed because of the situation that exists in Penn Central and some of the eastern railroads. We might as well face it, the thing that has made railroads—well, that has been a benefit to the South was what was intended to be a deficit to the South after the Civil War. The great expansion of the railroads was right after the Civil War when railroad traffic was the major traffic, practically the only fast traffic across the land.

So what happened is that the North got the great benefits of supplying its mill towns, no matter where located, with railroad trackage, whereas in my State of Texas you don't find railroads going to any place except from Fort Worth and Dallas and through the central corridor and to Houston and San Antonio. The whole West is unserved, areas as big as five States in New England are virtually without railroad traffic.

What I am saying is that this ultimately became a benefit to the southern and western railroads because they did not have to maintain

this now unprofitable trackage. But I do not join with those who say you ought to just take out these tracks to the old mill towns. If you do so, you are not just putting a burden of truck traffic on the parallel road lines to those mill towns. You are also putting truck traffic on the whole system of highways in the United States which feed those lines, because if you cut off the end of this transportation distribution system, you also cut it off right to its stem and you dump that load on the highway system.

I think, even though that may now appear uneconomic, it would be a bad mistake to move toward more traffic on the highways, because I think that most of those spurs, most of those lines, should be maintained and should be used, but if they are, it is going to be extremely difficult to operate a northeast system on the same profitmaking basis as is done in the South and West.

Mr. SHOUP. Thank you, Mr. Chairman, no other questions.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. I have three brief questions and it is nice to have you here this morning, Bob. First, under your bill, the employees would become Government employees?

Mr. ECKHARDT. Yes, sir.

Mr. ADAMS. The second question is that you have not provided in your bill for the necessary operating subsidy which testimony before us indicated \$175 to \$200 million a year for the Penn Central alone; do you intend, if you nationalize it, to provide an annual operating subsidy to pay for the deficit?

Mr. ECKHARDT. Well, I have provided in the bill that the obligations of Penn Central should be passed to the Northeast Transportation Authority and I have also provided in the bill that the conditions of service should be kept up to a certain level, that it should be made profitable to the extent it can be, but guaranteeing to the employees comparable pay with that of other railroads.

So I suppose that would become a necessary essential if this bill were passed.

Mr. ADAMS. I just didn't see an authorizing section for appropriations to pay the cost every year. But this authorization should be in it, if you are going to do it, correct?

Mr. ECKHARDT. Well, the difficulty in doing that is that the bill does not predetermine that the railroad will be taken over. It makes it an option. I see nothing wrong though with putting it in there as a conditional matter and perhaps it should be.

Mr. ADAMS. My third and last question is this. I assume under your bill, under section 5, that you would take all property of the Penn Central, not just some designated essential system, so you are going to both condemn and continue to operate everything up there for an indefinite future?

Mr. ECKHARDT. That is right, I think that is the way it differs from the Adams and Hartke bill and it goes to the question of roadbed, does it not?

Mr. ADAMS. That bill goes to the question of roadbed and we have another proposal going to the question of essential rail services as opposed to all properties presently being operated.

Mr. ECKHARDT. It is possible the two approaches would not be too far apart and it is possible that it would not be, or that the acquisition as part of the railroad would be the more desirable and more cautious

way to move. The only difficulty I have with it perhaps can be taken care of with language. I would not like to see a sort of left-handed subsidy given to the railroad by the Government taking over that which needs to have a great deal of money expended upon it, et cetera, without at the same time giving the Government a considerably enlarged policy authority.

Now, it may be that ultimately the two ideas could almost completely merge, because I think my objections to the bill, as I understand it, to the Hartke bill, would be that it just seems to me that at some point the Government is going to have to turn to policy as well as picking up some of the costs. I don't see that that is precluded in the approach of either the Hartke bill or yours.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Podell.

Mr. PODELL. I just would like to get the figures of the annual operating deficit of the Penn Central.

Mr. ADAMS. If two gentlemen will yield, they testified yesterday to \$135 million on one basis plus \$65 million more if you began to pay taxes or lease payments.

Mr. PODELL. Does anyone have familiarity with the total cost of the annual debt service of the Penn Central?

Mr. ADAMS. If the gentleman will yield, we asked them to supply us with that yesterday, but at the present time, as you probably know, they are not paying either taxes or portions of their debt service under the Bankruptcy Act.

Mr. PODELL. I was referring to their annual general debt service that operates under the railroads. It is quite possible, in connection with subsidy payments that the gentleman from Washington mentioned earlier, that once the Government takes over this railroad without the need for that type of debt service, certainly it would be tax-free in the same manner and certainly with the kind of tight control that could be exercised or should be, perhaps this railroad can operate at a slight deficit or even break even; it is possible to happen and I just throw it out as a thought to the gentleman, it is not really a question.

Mr. ADAMS. I am through, Mr. Chairman. Thank you also very much.

Mr. JARMAN. Mr. Dingell.

Mr. DINGELL. I would ask you one question. I am concerned here, Mr. Eckhardt, about one matter. That is, under the legislation that you offer, there is the question of the value at which the railroad properties, the property, the corpus and so forth, would be taken. Do you contemplate this to be the book value, the fair market value, the appraised price, or the distress sales price as part of the bankruptee's estate?

Mr. ECKHARDT. Frankly I don't know and I didn't specify in the bill because I think it is really a question of satisfying the constitutional requirements. I suppose the court would have to determine that in a proceeding provided here.

Mr. DINGELL. It has been my experience that the courts always tend to fix a rather high price and we had a situation where we recently got rid of Mr. Chalk here in the District of Columbia, as you recall, and at that point we tried to eliminate the requirement that we pay the value as a going concern, but the price that the taxpayers ultimately

paid to take over those particular facilities was rather higher than the price of just the equipment and facilities, not as a going concern, which I think was really the Congress' intention in this particular matter.

I am troubled as to which test we should apply, whether we should consider them as a going concern, which obviously a bankrupt railroad is not, or pay the value of bankrupt facilities alone as items or entities or pay the book value which may again be very different.

I have a notion that the book value may be less in some instances and more than that in others you figured. Whether we should pay essentially a distress price for the whole of the entity or whether we should pay a distress price for some parts of the entity and different prices for other parts? This is, I am sure, a rather important question for the committee and what is your counsel and advice on the matter?

Mr. ECKHARDT. I might say this, and this is one reason I think the bill ought to be written like H.J. Res. 50 in providing that a governmental agency will decide whether to buy at all. If we drew an act which required the Government to purchase, we would have no opportunity to negotiate with the trustees on these various bases and be faced with the kind of thing you are suggesting that has happened before, that the Government is called upon to take something over and then they take it over at what the court may determine, which may be the highest price.

Under this bill the Commission would be in a position to negotiate with the trustees in the beginning and say, "Look, maybe we will just let this property be sold, maybe we will just let the bankruptcy go to a dissolution." I think it is a mistake to tell the Government it has to buy properties and then let them negotiate, so we don't do that here.

But I know I am not answering your question really, Mr. Dingell, because I don't know which of those would be applied or which should properly be applied. I think that is something, though, the committee might well want to look into, as to what might be the Government's responsibility and to what extent this committee might determine the method of determining value, without going beyond constitutional authority.

Mr. DINGELL. Thank you very much and thank you, Mr. Chairman.

Mr. JARMAN. If there are no further questions, Bob, we appreciate your being with us.

Mr. ECKHARDT. Thank you very much, Mr. Chairman.

Mr. JARMAN. The Chair understands that the Honorable James M. Hanley, of New York, wishes to present a statement for the record.

Please come forward, Mr. Hanley, and proceed as you see fit.

STATEMENT OF HON. JAMES M. HANLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HANLEY. Mr. Chairman, to halt the deterioration of rail service, the erosion of the debtors estate and to revitalize and maintain the bankrupt railroads as private, profit oriented companies, I have assimilated various aspects of the major proposals into what I consider a reasonable and effective solution to the northeastern railroad crisis.

The main element of the plan would be the creation of a northeastern railroad corporation that initially would be not-for-profit but eventually self-sustaining. The NRC would begin operation immediately

upon approval by Congress of a core system developed by the ICC to be designated within 6 months of a northeastern reorganization plan. During that time the railroads would operate under Government guaranteed loans and once the NRC begins operations the railroads would not be charged for the first year of operations. Thereafter, Congress, upon NRC recommendations would determine rates.

Duties of the NRC would be to operate all trackage and freight yards in the core system, begin an immediate program to upgrade tracks and yards and operate the scheduling of all trains to run over the system. The trains themselves, except for switching engines, would still be maintained and crewed by the railroads themselves, but rolling stock and engines could be freely swapped by the companies to facilitate rapid shipments. The different scheduling systems of all six bankrupt railroads and Amtrak should be completely integrated before operations start to make for rapid shipping.

Financing for the system would be provided for by a 1-percent tax on all surface modes of transportation, and by additional budget requests if necessary. Due to the poor condition of much of the track to be acquired and the cost of upgrading it, the purchase price of the core system should be made at minimum cost to the taxpayer. Purchase of the core system would be through self-retiring Government-guaranteed loans.

Any job terminations under this plan should not be affected without arranging full compensation for those involved. All employees transferred to the NRC should not have to suffer a cut in wages. Since NRC will be carrying out a full scale effort at track upgrading they should enter into talks with the unions to arrange for employees that might have to be terminated to be switched over to repairing trackage. Repairs and upgrading should be done by the NRC using its own labor force rather than contracting the jobs out.

The problem of abandonments could be solved by the creation of a northeast transportation commission. This commission, which would include heavy representation by local and State units as well as the various government agencies involved, would determine which lines would receive a 60/40 Federal Government-State, State-local, business subsidy. The higher rate of State-local subsidizing than generally proposed is designed to discourage subsidizing lines that should be abandoned. Other duties of the commission would be to decide which abandoned lines should have their right-of-way maintained, and the commission would also study regulatory reform and recommend legislation in this area to State, local, and Federal Governments. Lines would be subsidized for a period of 2 years, after which the line could be subsidized for 1 further year, but only if the State, local, business contribution was raised to 70 percent.

The Northeastern Corridor, of vital importance to the successful operation of Amtrak should be taken over and run by the NRC. However, due to the expense of acquiring the corridor, the NRC should lease the line for 3 years and then purchase the right-of-way minus the cost of improvements. This would keep Amtrak out of involvement in the freight business, which Congress has already indicated as not being one of Amtrak's duties.

Finally, it is my belief that the future makeup and size of the bankrupt railroads in the northeast must be left to the determination of the bankruptcy courts. It is hoped they will create organizations

that will relieve the northeast from its overdependence on one company for the bulk of its freight. Also, Congress should bear in mind the lessons of the bankruptcy of the Penn Central and do everything in its power to remind the railroads that the business of a railroad is to run the railroad and not to operate it as a source of capital for other corporate projects.

Mr. JARMAN. Thank you, Mr. Hanley, for sharing your views with us this morning.

Mr. HANLEY. Thank you, Mr. Chairman, for affording me the opportunity.

Mr. JARMAN. Our next witness this morning is John F. Nash, trustee and chief operating officer of the Lehigh Valley Railroad Co.

STATEMENT OF JOHN F. NASH, TRUSTEE AND CHIEF OPERATING OFFICER, LEHIGH VALLEY RAILROAD CO.; ACCOMPANIED BY THOMAS J. SMITH, ADMINISTRATIVE VICE PRESIDENT

Mr. NASH. Good morning, gentlemen.

Mr. JARMAN. Mr. Nash, it is nice to have you with us.

Mr. NASH. Mr. Chairman and gentlemen, I have a brief statement and with your permission I would like to read it. I think it will cover a lot of pertinent facts relating to our particular problem.

Mr. JARMAN. We will be glad to hear you.

Mr. NASH. My name is John F. Nash. I reside in Bethlehem, Pa. I started my railroad career with the New York Central in 1925. In December 1955, I was elected president of the Pittsburgh & Lake Erie. In June 1956, I was appointed vice president, operations of the New York Central System, including responsibility for all aspects of operations including engineering, maintenance of way and maintenance of equipment. I was appointed senior vice president of the New York Central in June 1963, and president of the Lehigh Valley Railroad Co. on November 1, 1965.

The Lehigh Valley filed for reorganization under section 77 of the Bankruptcy Act on July 24, 1970. I was appointed trustee and chief operating officer on August 12, 1970. The other trustee of the Lehigh Valley is Robert C. Haldeman.

The Lehigh Valley extends from the metropolitan New York-New Jersey area to Buffalo and Niagara Falls, N.Y. It is comprised of 1,237 miles of main line track, 866 miles of branch line track, for a total of 2,103 miles of track.

At Buffalo, Lehigh Valley interchanges traffic with the Norfolk & Western, Baltimore & Ohio, Penn Central, and Erie Lackawanna; at Niagara Falls interchange is with the Chesapeake & Ohio, Canadian National, and Penn Central. Primary routes are:

1. Buffalo to New Jersey-New York metropolitan area.
2. New England via the Delaware & Hudson at Owego, N.Y., and Wilkes-Barre, Pa., for termination on Boston & Maine and its lateral connections.
3. To southern New England via the Lehigh & Hudson River Railroad.

4. Lehigh Valley also participates in traffic moving between the Northeast and the Southeast, routed via Reading-Baltimore & Ohio.

Seven hundred and seven industries, generating 130,722 carloads annually are dependent upon our company for their transportation

requirements because they are reached by no other railroad. In 1972 we moved 346,605 revenue carloads, an increase of 81,945 carloads over 1971, and also served as a detour route for Erie Lackawanna when its service was interrupted by tropical storm Agnes washouts last June.

We have the fastest route to the East. Our mainline is in sound condition with authorized speeds of up to 60 miles per hour. Lehigh Valley has the best situated yard in the New York metropolitan area. Clearly, the shippers dependent upon Lehigh Valley and the principal facilities of Lehigh Valley require consideration in the restructuring of the northeastern railroads.

In 1962, Pennsylvania Railroad acquired control of Lehigh Valley to prevent its inclusion in competing systems. While Lehigh Valley capital stock is owned 97 percent by Penn Central Transportation Co., the Interstate Commerce Commission, in Finance Docket 25949, decided February 28, 1972, as follows:

These facts compel us to a finding that Lehigh, operated with trustees independent of those of Penn Central and in a separately administered reorganization proceeding, may no longer be considered under common control and management in a legal sense, with Penn Central.

It will be helpful for me to describe briefly the conditions which led to Lehigh Valley's financial crisis and the steps taken toward reorganization.

The loss of revenues by Lehigh Valley since its profitable operation in the 1940's is the result of many factors:

Anthracyte coal contributed \$19 million in annual revenues in the 1940's. It contributed only \$2.2 million in 1971.

Lehigh Valley's interchange traffic with other railroads declined, primarily the result of inadequately protective regulatory decisions.

The merger of Erie Railroad and Delaware, Lackawanna & Western Railroad in the fall of 1960 was the first of a series of consolidations of eastern railroads which seriously affected the volume of interchange traffic. While Lehigh Valley is very dependent upon interchange traffic at Buffalo, its major competitors: Penn Central, Erie Lackawanna, and Chesapeake & Ohio-Baltimore & Ohio systems—are striving for their longest haul between the Mississippi River and east coast points. As a result of consolidations, they have interchanged less and less traffic with Lehigh Valley at Buffalo. The protection afforded Lehigh Valley in these matters has been illusory.

In 1965, the Norfolk & Western acquired the Nickel Plate and Wabash Railroads which were Lehigh Valley's largest sources of interline traffic at Buffalo. At the time, the Pennsylvania Railroad through its considerable investment in the Norfolk & Western also had a major interest in the Wabash. As a result of that merger, the Interstate Commerce Commission became concerned about the concentration of competitive service provided between Buffalo and New York City by the Pennsylvania Railroad and its affiliates. Because of the concentration of service in the Pennsylvania Railroad family, the Interstate Commerce Commission ordered the Norfolk & Western to refrain from soliciting traffic for Pennsylvania Railroad affiliated lines, including Lehigh Valley. That order resulted in the loss of thousands of carloads and piggyback movements per year by Lehigh Valley.

The traffic squeeze on the Lehigh Valley became even more acute with the merger of the Pennsylvania Railroad and the New York

Central in February 1968, and the affiliation of Erie Lackawanna and Delaware & Hudson in Dereco, a subsidiary of Norfolk & Western, in April 1968.

As a result, more traffic formerly handled by Lehigh Valley was diverted. Belatedly recognizing that the exclusion of Lehigh Valley from one of the three major eastern rail systems would seriously threaten the existence of Lehigh Valley the Interstate Commerce Commission ordered the Penn Central, as a condition of the 1968 merger, to preserve Lehigh Valley as a viable railroad until it could be included in either the Norfolk & Western or the Chesapeake & Ohio-Baltimore & Ohio systems. The collapse of Penn Central has prevented it from fulfilling this obligation. Penn Central has not routed traffic over Lehigh Valley because of its own routes between Buffalo and New York.

Of course, we also suffer from the impact of competition from common carrier and private trucking, particularly those using Interstate Highway I-80, and the increase in waterborne transportation through the St. Lawrence Seaway.

Turning now to cures for the persistent deficits of so many eastern railroads:

For years I have spoken out on the duplication of railroad facilities and wasteful competition between the carriers in the northeast. The time for talking has passed. We must immediately consolidate facilities, we must man our trains more efficiently and we must increase productivity in all areas of employment. Also, we must have funds to sustain operations during the transition.

When the Central Railroad of New Jersey abandoned its operations in the State of Pennsylvania on April 1, 1972, the Lehigh Valley took them over to protect the service requirements of the customers formerly served by the Central Railroad of New Jersey. We absorbed 350 employees of the Central Railroad of New Jersey who otherwise would not have had a job. This was a step in the right direction.

Three months later, the trustees of the Lehigh Valley filed with our reorganization court a preliminary plan looking to the day when we could come out of reorganization. One of the requisites in accomplishing this was our recommendation for immediate consolidation of the railroad facilities of the Lehigh Valley, Reading, and Central Railroad of New Jersey. These railroads serve a concentration of industry in the metropolitan New York-New Jersey areas which would be seriously affected by any stoppage of rail service. Our plan, if implemented, indicated a saving of approximately \$40 million per year. The result would be a consolidated railroad able to stand on its own feet, paying taxes, and fostering employment and industrial development. It would present a sound package for eventual inclusion in one of the major systems.

By February 1973 it had become apparent that voluntary association of the vital Central Railroad of New Jersey link in the proposed consolidation was inconclusive. In 1972 the Lehigh Valley incurred a loss of \$17.6 million. Clearly, the trustees had to take action to prevent further continued erosion of the estate. We could no longer await the evolution of a national transportation policy. Further delay, without any foreseeable prospect of viability, would be an unconstitutional taking of the creditors' security.

On March 6, 1973, therefore, we petitioned Judge John P. Fullam, for an order ceasing all rail operations of the Lehigh Valley no later

than October 1, 1973. The hearing on that petition will be on June 7, 1973. Make no mistake about that, unless there is immediate, effective, and substantial involvement by the Federal Government, this carrier will go out of business after 127 years.

Traditionally, a reorganization under section 77 has involved the recapitalization of a viable but overcapitalized railroad, having net earnings before provision for fixed debt charges. The function of section 77 in the case of such a railroad is to permit the continued operation of the railroad while providing for a fair and equitable adjustment of the creditors' interests by recapitalization of its debt structure and reducing fixed debt charges which exceed the earning power of the railroad.

The main issue in the present reorganization, by contrast is whether Lehigh Valley can be so restructured with any assurance of net earnings. I am of the opinion that it cannot without Federal help and reduction of costs through consolidation.

Why should Lehigh Valley routes be saved? Why any railroads at all? Beyond question, freight transportation will continue to grow. Restrictions on trucking are growing with concern about fuel, noise, odor, and safety. These restrictions will increase the cost of moving freight by highways. Some cities have already curtailed the hours during which trucks may operate, which reduces their competitive advantage. States are again passing laws which limit the length, width, height, and weight of highway vehicles. The cost of building new roads is becoming almost prohibitive. It seems inevitable to me that there must be a modal switch back to the rails as we enter a period of some kind of rationing of road space and even perhaps of fuel.

While management is often a convenient target for criticism of the Nation's railroads, it would be unfortunate if the committee did not recognize that a substantial part of the industry's problems arises out of factors beyond the control of any management. Changes in the lifestyle of our society have impaired railroad earnings, but other factors such as highway congestion, fuel shortages, the energy crisis for example, could well restore the rail industry to a dominant position in long haul transportation.

Let me reemphasize, in terms of national problems, that the energy crisis, the saturation of the Interstate Highway System, the continuing financial difficulties of the St. Lawrence Seaway, the overdue concern for ecology and environment, all point to a revival of the Nation's railroads.

The energy crisis is clearly upon us. The demand for fuel is outgrowing all projections, at the very time when the supply is becoming less available—at least at an acceptable price, both monetary and political. On April 2, 1973, the Petroleum Industry Research Foundation, Inc., released a study predicting a serious gasoline shortage in 1973. Diesel fuel, aviation fuel, and household heating fuel are in tight supply. Environmental legislation is reducing the efficiency of the automobile engine at the very time we are seeing the greatest rise in automobile ownership.

State laws severely restrict the use of high-sulfur fuel. Off-shore drilling is becoming more subject to local restriction. Strip mining is being attacked, while atomic power plants face the very real problem of thermal pollution. All of these considerations affect national policy and will require difficult decisions soon. Transportation which con-

sumes one half of the Nation's oil, must be closely studied. A truck uses four times the amount of fuel to move a ton-mile of freight as a train; an airplane, 25 times the amount. Substantial conservation of fuel can be obtained by extensive use of our railroads, particularly on long hauls.

Several proposals for Federal legislation to cure the railroad problem are before you.

The Department of Transportation announced on March 26, 1973, its plan for the survival of the carriers in Northeast United States. We find little in the Department of Transportation plan that would help the Lehigh Valley. Indeed, I cannot accept the idea that the mortgage trustees of any railroad would be willing to exchange their secured obligations for the stock of the new for-profit corporation proposed by the Department of Transportation.

Further, the concept that the private sector will finance this plan strains credulity and runs contrary to my experience. In at least one case, a railroad had difficulty in selling trustee certificates—even though those certificates had the full faith and credit backing of the U.S. Government.

I find it difficult to comprehend just why the Department of Transportation requires an act of Congress plus 90 days to define the Core system. For openers, most of the work has been done. The Penn Central trustees have identified the 11,000 viable miles of their 20,000-mile system. The Central Railroad of New Jersey, Reading, and Lehigh Valley have identified the trackage in their systems to be retained. That leaves only the Erie Lackawanna, which really has a different problem, and the Boston & Maine.

I believe the Department of Transportation's Core system should be before Congress when it votes on the bill. If the plan is sound, public examination should not hurt it. If not, no better time to determine it.

On April 25, 1973, after Secretary Brinegar testified before you, I received a letter advising me that the Lehigh Valley's application for a Government-guaranteed loan, in the amount of \$10 million, had been rejected. The application was filed October 4, 1972, and supplemented January 16, 1973; no hearings were held.

Everyone gets uptight when railroads seek financial assistance. No one seems to bat an eyelash when financially troubled defense contractors or airlines receive Government financial aid and even outright grants. Railroads, too, play an important part in national defense. Why shouldn't they receive the same consideration?

H.R. 6591, introduced by Representative Staggers, on the other hand, represents a realistic program for a solution of the railroad problem. We should be sensible enough and sophisticated enough not to be scared off by cries of "nationalization." H.R. 6591 is no more "nationalization of the railroads" than Government ownership of ships which were operated by private companies was nationalization of the maritime industry.

The Nation's sixth largest airline, Allegheny, which provides service in our area, owns no runways, provides no air controllers, maintains no en route navigational aids. In 1972, Allegheny collected \$3,200,000 from the Civil Aeronautics Board in annual Federal subsidy, although its profits were \$6 million.

No one even begins to think that airline has been nationalized. Nor does ownership of highways result in nationalization of trucking. Let

those who want to call it "nationalization of the railroads," the hard fact is that 75 percent of this Nation's freight traffic is already moved by our competitors over nationalized rights-of-way.

The Interstate Commerce Commission and its experts should be complimented for a well-thought-out proposal as set forth in the submission and recommendation to Congress on March 26, 1973. In my opinion, H.R. 6591, if enacted, is an effective solution to the railroad problem.

Participation in the Interstate Commerce Commission's plan would be voluntary with the trustees of railroads in reorganization, and would require approval of their reorganization courts. Secured creditors, of course, would have their right to a court hearing on the question.

The approach to financing a benefit to one segment of the community by a tax on another segment is no different, essentially, then subsidies to airlines, to shipping companies, or to farmers, out of taxes paid by all the rest of us. For example, many homeowners pay school taxes although they may have no children in the public schools they pay to support.

In this case, that segment of the commercial community which is being called upon to pay the transportation tax, namely shippers of freight, will benefit directly, in the long run, from the increased transportation efficiency paid for by their taxes.

Another part of the Interstate Commerce Commission bill provides an abandonment procedure for rail segments which cannot be operated profitably. If a State should desire to continue service on such a segment which, although unprofitable, is essential to the needs of its communities, provision is made for the continuation of the service if the State pays an operating subsidy. The act provides for reimbursement by the Commission to the State of 70 percent of such operating subsidy.

I say again that call it what you will, the cost of restructuring and modernizing rail service to the northeast, a service essential to the welfare and defense of the entire country, will not be underwritten by private capital. The reason is simple: Under present conditions, no one can make any money out of it. There must be a turnover period when these carriers can get back on their feet and establish a valid projection of viability.

I do have three suggestions for improvement of the Interstate Commerce Commission's proposed legislation. While it is proper for the Commission to supervise budgetary matters, I do not consider it either practical or necessary to have an Interstate Commerce Commission employee supervise the day-to-day operations of a railroad, as provided in section 201(e).

Furthermore, the bill's rental provision should specifically include an amount sufficient to permit financing of new equipment, such as freight cars and, especially, locomotives. Railroads in reorganization are operating equipment long past its prime, which impairs reliability and makes maintenance costs unreasonably high.

Also, the Interstate Commerce Commission proposal appears to be unduly cumbersome in dealing with the abandonments of branch lines. An 18-month delay, for example, where one small user objects to the abandonment, seems quite unfair. If the economics of abandonments are to be attained, the State should be required to determine

whether it will participate in a low-density subsidy contract in a much shorter time. It is suggested the provisions of section 13(a)(1) of the Transportation Act of 1958 be broadened to cover abandonments. This substantial deregulation has worked well. We think it sufficient for a carrier to notify of its intention to abandon a branch. The Commission would have 30 days to decide whether to suspend and hold hearings. If it was decided not to suspend the abandonment would occur. However, if suspension was ordered, hearings should be completed and an order issued within 4 months of the notice date. If the order denied the abandonment, it would be valid for 1 year from the date of original notice, at that time the carrier could proceed again.

We recognize that the necessary restructuring of the northeast carriers will mean a severe cutback in trackage and facilities adversely affecting some employees in the process. Labor protection costs will be high. A reduction of employment, wherein labor would be forced to obtain its protection in a priority fight with creditors in reorganization, is a solution which would be unfair and wholly unacceptable to Congress. There is need, therefore, for a federally funded program to provide such payments as a cost of social change.

In the past 48 months railroad labor received increases amounting to 46 percent. On the Lehigh Valley, labor costs amount to \$0.68½ of every revenue dollar we take in. This, of course, does not leave much to cover fixed charges, modernization, or acquisition of new equipment.

Moreover, an enlightened approach is needed to the problem of the rail employee who, by reason of age or unique work experience, finds a transfer of his employment almost impossible. The rail industry has many older employees. For example, the mid-month man count for February 1973 on the Lehigh Valley was 2,677, 565 or 21 percent are over the age of 60. Actually, 95 are over 65. Mandatory retirement at 65 with optional retirement at 60 would go a long way toward solving the surplus labor problem.

On the Lehigh Valley we have 20 labor organizations, only 6 of which have a mandatory retirement age and in one of those that age is 70. The employee retiring between 60 and 65 must be assured his railroad retirement will not be diminished. A supplementary payment plus an appropriate ruling by the Railroad Retirement Board would meet the needs of these people. Maintenance of health and life insurance is essential.

In return for this added protection, the labor organizations should reappraise their work practices. Labor organizations, in the face of competition of other transportation modes must agree that management has the right, subject to appropriate safeguards, to set the number of employees in each crew. No one would be displaced, but attrition would take over. Most freight trains can meet all safety standards with a three-man crew.

Finally, the time has come for compulsory arbitration. It is most important that there be a finality to these issues. They sap the strength of both sides and stand in the way of meaningful progress toward common interests.

That this hearing is being held today is evidence the Government has, at long last, recognized the importance to the Nation of equalizing the treatment of the railroads with that of trucks, the highways, the seaways, and the airways.

The restructuring of the railroads contemplated by H.R. 6591 is a vital necessity. In my opinion, we presently have too many companies engaged in destructive competition for too little traffic. Hundreds of miles of redundant rights-of-way, track, yard and terminal facilities must be eliminated. A byproduct of these retirements would be a favorable environmental effect on many communities and would facilitate urban renewals. The remaining essential facilities must be modernized before they can be used efficiently, and funds for that purpose can come only from Government.

Reluctantly, after a lifetime as a rugged individualist, I, along with others who have to face up to new conditions, must look to Government as the only possible source of the financial help which is necessary to enable the northeastern railroads to emerge from reorganization strong and capable of assuming existing and future responsibilities.

While we have recommended a few minor modifications to the bill as it is now written, if need be, the bill in its present form is something we can live with. Therefore, I respectfully urge this committee to take prompt and favorable action on H.R. 6591.

Mr. JARMAN. Mr. Nash, I think you made an excellent statement, very realistic and it is a very good summation of most of the major problems we face in this hearing.

You referred several times in the statement to the need for financial help.

Are you in a position to give the committee any more details and recommendations as to the cost factor involved?

Mr. NASH. Well, of course, Mr. Chairman, I was directing my remarks here today to the consolidation of three railroads in trouble: CNJ, Reading, and Lehigh and that \$10 million application we had applied for was not only to cover back wages that we owe our employees but also to give us the money to get us started toward a consolidation of these three companies.

We needed some startup money to modernize some of our facilities and get some equipment.

Overall, speaking of the Northeast carriers as a whole, it is hard for me to tell how much would be needed, but I can speak for the three companies in my local area; that we felt that \$10 million would get us off of the ground.

Mr. JARMAN. When you talk about funds necessary to sustain operations during a transition period, to which you have referred, what does that include?

Mr. NASH. It would include, Mr. Chairman, money for revitalizing the railroad rights-of-way, acquiring new ties and new rails and possibly some more locomotives and things of that nature.

Mr. JARMAN. Well, we are all considering this problem and reaching out for the answers and any recommendations, particularly in specifics, would be helpful in attacking this problem.

Mr. NASH. We certainly can give you the benefit of our studies going on now. At the moment we have a segmentation study going on, which means we are taking various segments of our railroads, if we are liquidated under the court order, the hearing that is coming up on June 7, certain segments of our property certainly should be of value to other carriers and we are trying, in the segmentation study, to figure out what segments would be necessary and viable to somebody else.

That study is in process and I would be happy to submit the results of that to this committee. I think it would be very enlightening. I know all of the railroads in the Northeast, because I spent my own career in this area—we have hundreds of miles where one railroad parallels the other and there is no need for this duplication. With a very small number of industries on each of the lines, they can be consolidated.

This is the thing that has to be done, particularly in the Northeast.

Mr. JARMAN. You have given a most favorable prediction of the future of railroad operations in the country and the need for the service.

Mr. NASH. I think it is coming, sir, definitely coming.

Mr. JARMAN. It is more than I have heard before and it is interesting and encouraging.

Mr. NASH. Thank you.

Mr. JARMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

I want to commend you because you have given us a helpful and enlightening and thoughtful statement that I think speaks very well of you.

You referred to the \$10 million application. This subcommittee, to the best of my knowledge, was not aware of the fact that the application had been made or turned down.

Will you submit papers¹ so we can appreciate precisely the basis on which the application was made?

Mr. NASH. Yes.

Mr. DINGELL. And also the basis on which it was turned down?

Mr. NASH. Yes.

Mr. DINGELL. Because I think it is something I would personally like to pursue privately and find out the basis.

As I understand your application for \$10 million it was made on the premise you were going to reorganize your own road together with other roads.

Mr. NASH. Two other roads and pay back wages.

Mr. DINGELL. Would that \$10 million have made the three roads that you would have united viable transportation?

Mr. NASH. Not in the first year, Mr. Dingell, but we look for a break-even.

Mr. DINGELL. Over what period of time?

Mr. NASH. Within 2 or 3 years.

But also, more importantly, even though these three carriers are put together, we never expected that they could stand on their own for any length of time.

They still have to become part of one of the major systems that would remain in the East, whether it is one or two, whatever it is.

Mr. DINGELL. What were the other two roads?

Mr. NASH. Lehigh Valley, Reading, and CNJ, Central Railroad of New Jersey.

Mr. DINGELL. Your assumption was that you were essentially buying time?

Mr. NASH. Right.

Mr. DINGELL. During which these railroads could continue functioning on the basis of this guarantee?

¹ The papers referred to were subsequently supplied to the committee by Mr. Nash and they may be found in the committee's files.

Mr. NASH. That is right.

Mr. DINGELL. My chairman indicates to me there was no hearing. I am not sure there was a requirement there be a hearing, but certainly these matters should be discussed with the carrier.

Mr. NASH. There is no requirement for a hearing. In their opinion, I believe Secretary Brinegar decided we had no possible chance of being viable.

Perhaps that was part of the requirements for a Government guaranteed loan. On that basis, I presume he turned us down.

Mr. DINGELL. Of course, a similar requirement, I think the viability of Penn Central was very much in doubt under similar circumstances and yet significant advances were made to that railroad.

Mr. NASH. Right.

Mr. DINGELL. I am groping for more information on this. I confess you have more knowledge on this matter than I do.

Is there anything else you can tell me that will be of help to me?

Mr. NASH. Last June, during the Agnes flood, we sustained about \$6 million in damage to our right-of-way.

Mr. DINGELL. We passed special legislation that is different than the Penn Central guaranteed provisions, which also were made applicable to your road.

Were you denied under the general statute relating to Penn Central and other bankrupt roads or are you referring to specific legislation in the past with regard to Agnes?

Mr. NASH. No, as Mr. Smith, my colleague here, tells me, we were entirely relying on the bill that was passed, the Emergency Transportation Act.

Mr. JARMAN. Could you identify your colleague for the record?

Mr. NASH. Thomas J. Smith, administrative vice president.

Mr. DINGELL. I yield to Mr. Dixon.

Mr. DIXON. Which act was this?

Mr. SMITH. The application was made under the basic Penn Central Relief Act, the Transportation Service Act, and the reason for the turndown, and we cannot add a great deal, we only have a simple letter statement of a couple of paragraphs referring to the fact it was filed and then stating: "After review of the application, supplemental information submitted by your staff, I reluctantly consider I cannot make the findings required by section so-and-so of the act at this time and it is denied," et cetera.

Mr. DINGELL. When did this transpire?

Mr. SMITH. This letter is dated April 25, 1973.

Mr. DINGELL. I think this matter bears further scrutiny, Mr. Chairman.

I am not sure how the subcommittee could go into it.

Mr. ADAMS. If the gentleman will yield, it is under the Emergency Rail Services Act by which you remember we authorized an additional amount beyond that required for the Penn Central and the basis was that guaranteed loans would be made available to the other railroads in the Northeast as they required assistance or were in reorganization, under the same terms and conditions as were done for the Penn Central.

Mr. DINGELL. I am sure those are the provisions under which treatment of the other roads was to be the same as Penn Central's.

Mr. NASH. CNJ is the only other railroad that got a loan under that bill.

Mr. ADAMS. That is my understanding, that the only other of the six that are in bankruptcy besides Penn Central was CNJ and that was because of the liquidation order that was first handed down by the judge. Later it did not completely liquidate because the Governor of New Jersey and the Jersey Central entered into a temporary agreement to maintain commuter service, is that correct?

Mr. NASH. That is correct.

Mr. ADAMS. And that ties into your statement that you picked up the service from Jersey Central.

Mr. NASH. Right.

Mr. DINGELL. I have some more questions, but I don't know what they are now and I would like a further opportunity later on, but thank you.

Mr. JARMAN. Mr. Harvey.

Mr. HARVEY. Thank you, Mr. Chairman.

Mr. Nash, that is a fine statement you made here and you are welcome here this morning.

Mr. Chairman, I would suggest that in view of what has been said that we ask for that letter and I ask unanimous consent it be inserted in the record.

Mr. JARMAN. Without objection, it is so ordered.

[The letter referred to follows:]

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., April 25, 1973.

MESSRS. JOHN F. NASH and RICHARD C. HALDEMAN,
Trustees, Lehigh Valley Railroad Co.,
Bethlehem, Pa.

GENTLEMEN: This letter is in response to your application dated October 4, 1972, and filed with the Secretary of Transportation under section 3(a) of the Emergency Rail Services Act of 1970 (84 Stat. 1975), as supplemented by letter dated January 26, 1973. In the application you applied to the Secretary for guaranty of certificates to be issued by yourselves on behalf of the Lehigh Valley Railroad Company, Debtor in the amount of \$10,000,000.

After a review of the application and the supplemental information submitted by your staff, I have reluctantly concluded that I can not make the findings required by section 3(a) of the Act at this time. The application must therefore be denied. In closing, however, I would like to thank you for the cooperative attitude of your staff in facilitating our review of this matter.

Several creditors and others expressed an interest in being heard in opposition to your application. I am sending a copy of this letter to them, to Judge Fullam and to the other courts in which those parties are engaged in matters related to their interest in this application.

Sincerely,

CLAUDE S. BRINEGAR,
Secretary.

Mr. HARVEY. Mr. Nash, I was interested in reading in your statement that in the year 1972 you showed a tremendous increase in number of carloads moved, about 30 percent, almost, I believe.

Mr. NASH. Right.

Mr. HARVEY. And despite this fact, you are still in a financial crisis.

Mr. NASH. That is right.

Mr. HARVEY. According to your statement, I think much of that crisis can be attributed to a series of ICC decisions which have caused tremendous problems for the Lehigh Railroad. Yet you urge our committee to support the ICC bill under which most of the authority is given to the ICC. Doesn't this seem contradictory?

Mr. NASH. I can explain. The increase in our traffic in 1972, in the statement you recall I said the Central Railroad of New Jersey abandoned its operations in the State of Pennsylvania on April 1, 1972.

We moved in and took over their operation. They abandoned 341 miles of track and a lot of customers. We were on one side of the river and they were on the other and we did meet in a couple of places.

As a matter of fact, they had to operate over 26 miles of our track where they had abandoned in between over the years.

However, that big increase in traffic, Mr. Harvey, came from the fact that the CNJ moved out of the State of Pennsylvania.

It was bridge traffic, primarily, of the D. & H. Railroad which we moved 88 miles from Wilkes-Barre down to Allentown and gave it to the Reading.

However, it is very low revenue. Our average revenue per car runs about \$52, because of such a short haul. So, while we had volume, it was not very profitable. And there was no need of putting another railroad up there because formerly we had three railroads and all of us were starving.

Mr. HARVEY. Was that movement a one-shot deal?

Is that repeated every year?

Mr. NASH. Oh, yes, they moved out.

Mr. HARVEY. If repeated every year, it still would not be profitable?

Mr. NASH. No. It involves a long division case, let me put it that way.

For instance, six railroads participate in a carload of traffic from Maine, we will say, to Washington, D.C. You have the Maine Central, the Boston & Maine, D. & H., Lehigh Valley, Reading, and B. & O.

Say the carload of freight is worth \$300, freight charges, and that \$300 has to be split up six ways. So, there is not much revenue there.

This brings up or brings us back to the point which I have made, that is why we need these consolidations.

Mr. HARVEY. Let me ask you this one other question because time is going very fast.

What standards do you use to determine what the essential core of this railroad should be? What standard for a segmentation plan?

Mr. NASH. Well, that is a very good question, Mr. Harvey.

We take the railroad and let's take the main line, for instance, 438 miles long, we will take a 60-mile segment here and a 60-mile segment here and we find out, through our study, the traffic volume, originating, terminating, the revenue versus expenses, and whether or not it could be profitable to another railroad.

That is what we do.

Mr. HARVEY. Then, of course, there has to be another railroad adjacent to it?

Mr. NASH. Yes; that railroad has to be interested in taking it over, too; it may be that the railroad will figure that the traffic is not justified, or profitable to take it over.

Mr. HARVEY. There is no consideration given to the industries located there, to their importance to the country as a whole, to any other factors, their willingness to contribute toward cost of transportation, or any of these factors, I take it?

Mr. NASH. Well, we have that in our Reading, Lehigh, CNJ study, that was all taken into consideration. However, in our segmentation

studies, we don't know, for instance, whether the Erie Lackawanna would want to run 60 miles to reach one industry, whether it would be profitable for them.

So, we have to make some assumptions. So we know we are on sound ground. We know what part might be profitable and what part would have to be totally liquidated.

Mr. HARVEY. We think you have given us a very helpful statement. Thank you, Mr. Chairman.

Mr. JARMAN. Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. Nash, I appreciate very much your statement, particularly your information that gives us again a timetable for liquidation.

As I understand it, your timetable for liquidation is the same as that of the Penn Central, which is October 1 of this year, unless circumstances change; is that correct?

Mr. NASH. That is right.

Mr. ADAMS. I will ask you the same question I did of the Penn Central people yesterday.

Is it your considered judgment as trustee of this railroad that the railroad could be brought out of this reorganization without Federal assistance?

Mr. NASH. No, it cannot be.

Mr. ADAMS. I understand from your statement that it is also your considered opinion that you cannot probably create a new corporation or use Amtrak plus a new corporation without some type of Federal assistance in that corporation; in other words, that you as a trustee, and I asked it of the Penn Central trustees yesterday, would not be recommending to your creditors, that they exchange assets for common stock unless there be some kind of Government involvement in the new corporation?

Mr. NASH. That is correct, sir.

Mr. DINGELL. Will you yield, please?

Mr. ADAMS. Yes.

Mr. DINGELL. Do you perceive any constitutional questions in that manner; in other words, enforce the exchange of obligations for common stock, would it raise constitutional questions if the individual happens to think the common stock were of minimal or not of fair value?

Mr. SMITH. I think, if I may, sir, that seems to be a position that fairly well taken, and whether it is still true today I don't know.

But the question of whether you take a security like a mortgage bond and force someone to take common stock in a rather uncertain corporation would certainly be raised as a constitutional issue.

I don't know what the Supreme Court would do about it today.

Mr. DINGELL. Thank you.

Mr. ADAMS. Will you be prepared because you as a trustee will be making recommendations to the judge if this should come about, to recommend on behalf of the estate and offer on behalf of a Government corporation, and I won't try to bind you as to what type of secured Federal backup security might be necessary, the acceptance of an offer by a Federal operation or Federal corporation to take over some of the assets so that they can be run?

Mr. NASH. Mr. Adams, if I understand you correctly, in other words, if we cease operation this coming October 1 and the Govern-

ment decides to move in and pick up certain segments of that, would I recommend to the court that this be done?

Mr. DINGELL. If an offer were made, in effect, for the Government to buy out or to lease with a Government-backed obligation, that a portion should be sold off in that fashion.

Mr. NASH. Well, that would depend, Mr. Adams, on what transpires on June 7 with our creditors there. I think this is a decision that Judge Fullam will have to determine.

Mr. ADAMS. I understand completely that Judge Fullam will have to make that decision. What we are talking about, so you understand, and I know you do, is that some of us are trying to develop a proposal here because we see the weakness of the ICC proposal which puts the regulatory agency in the position of being an operating entity and that we have to create another entity or have the Secretary of Transportation do it. I am not certain that he or the Federal Railroad Administrator is staffed to conduct an operating function here, so I will ask you if you would support the concept generally that is in the ICC proposal, if we created a Government corporation with Government-backed obligations that could be used to make offers into your bankruptcy.

Mr. NASH. I am sure I would. The same thing would apply if the price was right or the rental was right, of some railroad wanting to take another segment of our property.

Mr. ADAMS. That was the next thing I wanted to ask: Should we be thinking in terms of not only having a governmental operation, but make certain that the three potential entrants into the area; there is a third one, we mentioned B. & O., C. & O., and—

Mr. NASH. And Norfolk and Western.

Mr. ADAMS. Yes; Norfolk and Western, and there is also the Southern, that there be authorization that they could make bids for segments of the system. By your nodding your head, I assume you think we should see that that alternative is available also?

Mr. NASH. Yes.

Mr. ADAMS. All right.

Now, the abandonment of the track in the State of Pennsylvania by Central of New Jersey—was this done under section 77(b) under the Reorganization Act, where the judge simply required them to stop this service?

Mr. NASH. Yes.

Mr. ADAMS. It was, was it not?

Mr. NASH. Yes.

Mr. ADAMS. And has this been challenged in the court?

Mr. SMITH. Yes, Mr. Congressman, I can speak to that with a little experience, having been president of the CNJ at the time it was done.

The action was taken pursuant to court authority. The order was written in such a way that unless the ICC acted and acted favorably by April 1, the trustee was directed to cease operation in Pennsylvania.

The Commission did not act by that date, although subsequently they did, in effect, ratify the order of the court while on April 1, pursuant to the order of the court, the operation terminated.

Mr. ADAMS. Now, that is very important to this committee because that is my understanding of what happened.

Mr. NASH. That is right.

Mr. ADAMS. And the pattern has already been established in the bankruptcy or reorganization, whichever you want to call it, in the Northeast, that the courts are fully prepared to stop service by segments, as is necessary to protect what they consider to be the rights of the estate that is before the court.

Now, I asked the Penn Central trustees yesterday morning, and I will ask you the same thing: Have you developed a staged plan of liquidation yet or is this part of the June 7 hearing?

Mr. NASH. Mr. Adams, we are all working on that very project at the moment.

We are having meetings of the staff every day figuring out what we are going to present on June 7.

At the moment, we do not have the plan completed. But we are, you are right, studying the situation.

Mr. ADAMS. The court has, in effect, ordered you to present to them an orderly plan of liquidation or a plan of reorganization, so you can become viable, isn't that correct?

Mr. NASH. This is correct, sir.

Mr. ADAMS. And you have already testified to us, just as the Penn Central trustees did, that unless this committee does something, there is no way you can reorganize it?

Mr. NASH. No; we cannot.

Mr. ADAMS. So you are required to prepare under plan No. 2 for ceasing service?

Mr. NASH. That is right.

Mr. ADAMS. I want to be certain about it because that is really the only basis on which this committee, in the public interest, then begins to move into the matter.

Mr. NASH. I would like to mention one thing of interest to the committee. We are preparing a budget for liquidation.

The budget means, whether we sell off this piece or lease this piece of the railroad or lease it all, or sell it all, and if that does not occur, then we are preparing a budget for selling off the real estate, the track, the ties, any of the assets of the company.

Mr. ADAMS. I see.

These will be presented to the court by the parties involved and in the case of Penn Central, I believe it is June 1, and in your case it is June 7; is that right?

Mr. NASH. Our hearing is scheduled for June 7, but Judge Fullam ordered the Penn Central trustees to come in by July 2.

Mr. ADAMS. July 2, I am sorry.

Mr. NASH. Yes, with a plan for reorganization and failing that he has intimated he will direct them to liquidate by October 1 the same.

But we filed our petition voluntarily, the trustees.

Mr. ADAMS. My final question, and I asked this of the Secretary of Transportation and his panel when they were here, involves a matter of timing as we start to move into this, and relates to the creation of this core system or segment.

Have you supplied to the Department of Transportation your designation of a segmentation plan for the Lehigh Valley?

Mr. NASH. No, not exactly. We have had many meetings with them. They knew all about our consolidation with the Reading and CNJ.

Mr. ADAMS. In other words, you have supplied them with the information?

Mr. NASH. Yes, sir.

Mr. ADAMS. And they are aware of the segmentation plan for the Jersey Central, the Lehigh Valley, and the Reading?

Mr. NASH. That is right, sir.

Mr. ADAMS. All right.

In other words, there should be information in the hands of the Department of Transportation if they are the agency that is going to be designating a core system, supplied by you already, so they don't need a substantial period of time to go out and get information from you.

Mr. NASH. That is correct, sir.

Mr. ADAMS. Do you have knowledge as to whether or not the other bankrupt estates have done the same thing?

Mr. NASH. Well, I know the CNJ has and the Reading has. That is tied into our study. I am not sure that the other carriers have.

They may have, but I am not sure they have. But I can tell you, they can tell you what part of their line they will give up as being not essential.

Mr. ADAMS. That was the last thing I was going to ask, and we are asking this of all of the people who have been operating in the Northeast for a long time.

There is pretty general common knowledge, is there not, as to what is the track system that should exist in the northeast quadrant of the United States and this system could be produced very quickly by a meeting of the minds of the operating people?

Mr. NASH. I would have to say yes, sir.

Mr. ADAMS. "Yes" is your answer.

Thank you.

Mr. SHOUP. Mr. Chairman?

Mr. JARMAN. Yes.

Mr. SHOUP. Mr. Chairman, I make a unanimous-consent request, in line with the questions that have gone on here, that all of the northeast railroads be requested by this committee to submit their plan of their core system.

We were unable to get this total, as Mr. Dingell pointed out, and we pointed out to the Secretary of Transportation, we are not able to get it from him, the total, so why don't we ask each individual bankrupt railroad for their plan.

Mr. DINGELL. Will you yield?

I would like to echo the gentleman's request. I think this would give us a very interesting comparison between what the Department of Transportation says, if they are going to say it, and it seems like getting something out of those folks is difficult, will give us a useful comparison of what the railroads themselves say.

Mr. SHOUP. I ask unanimous consent to make it a part of the record.¹

Mr. JARMAN. Without objection, it will be so ordered.

Mr. SKUBITZ. Will you yield?

Mr. ADAMS. Yes.

Mr. SKUBITZ. Mr. Nash, have the bankrupt railroads met; that is, between themselves and are they jointly recommending an overall program? Or do you have your own suggestion?

¹ The information requested by Mr. Shoup and Mr. Dingell was obtained by the committee staff and may be found in the committee's files.

Mr. NASH. Yes; we have met quite often with the Central Railroad of New Jersey trustee and quite often with the trustees of the Reading Railroad and we know, we can put it down on paper right now for this committee, if they wish, what we could retire.

Mr. SKUBITZ. I am not speaking of your line alone, but of all of the lines, including Penn Central.

Mr. NASH. Well, I am not with the Penn Central, I met with the Penn Central trustee, Mr. Langdon, I have not met with all three of them, but we have had conversation with the other railroads, yes, but not in formal meetings.

Mr. SKUBITZ. I would think it would be quite helpful if such a meeting were held. Agreement might be reached between the railroads on their view of an overall program.

Mr. PODELL. If you will yield, I find it quite incredible at this late date, to hear that there are six additional bankrupt railroads in the northeast section in addition to the Penn Central, and that at no time did the seven of you sit down around a table and try to come up with a uniform method of operation.

Now, it seems to me incredible that with the community of interest you do have, and the common problems that you have, that you come to this committee for us to decide on what you should have done years ago?

Mr. NASH. If I may interrupt, Mr. Podell, I think I was misunderstood. We have met with the trustees of the L & HR, with the president of the D&H, we talked with the trustees of the B&M. We talked with the trustees of the Penn Central, and we had discussions and talked with the Erie Lackawanna about joint use of facilities, But our formal meetings have been right in our particular area.

Mr. PODELL. These are individual conversations with individual trustees; is that right?

Mr. NASH. Yes.

Mr. PODELL. Well, you have never sat around a table, all of you, with the common problem, to discuss the matters that affect you jointly; isn't that true?

Mr. NASH. Well, B&M is a little far removed from us. We don't connect with it directly. We have met with all carriers we connect with directly.

Mr. PODELL. Individually, but not together.

Mr. NASH. Well, we have to crawl before we walk and our immediate problem was getting our area railroads together to try to come up with something.

Mr. PODELL. You have been running now for almost 3 years and going in circles.

Mr. ADAMS. Mr. Chairman, I know time is getting late, so I would just like to close my remaining time with one question. Which agency do you want to have this committee designate to be the one to say, "This is what the Government must buy as essential rail services," the ICC, DOT, or do you want us to do it ourselves or do you want to say, "DOT, do it" and "ICC review it on a very tight timetable"?

Mr. NASH. Well, I recommend approval of the ICC formula or plan and I would have to say, if I had a choice here today, Mr. Adams, I would select the ICC. They are quite familiar with our property. As a matter of fact, they have men on the property right today.

Mr. ADAMS. The problem we have is that there is an enormous regulatory lag down there. I understand your position, though, and I think they are the operating people and if that is the group you think ought to be designated for this, I will go along.

Thank you.

Mr. JARMAN. Mr. Skubitz.

Mr. SKUBITZ. I want to commend you, too, on your statement, Mr. Nash, I was interested in your comment of the effect that the environmental act and the energy crisis may have on the future of the railroads. I wonder if the environmental legislation and energy crisis may also have an effect on the future of the passenger transportation in this country?

Mr. NASH. I think so.

Mr. SKUBITZ. We may find it necessary in the future of going back to greater use of the rails. Even passenger service might reach a profitable margin again. What is your view on that?

Mr. NASH. I don't know whether it can become profitable again, but I do think we are definitely headed back to the rails for mass transportation, certainly up to areas of 300 miles.

Mr. SKUBITZ. If we move into fast rail transportation, if we can get the roadbeds in shape, and if we can travel at the rate of 150 miles an hour the 300-mile radius would require perhaps a 2-hour trip. Do you believe if we could reach that rate of speed we might consider a 600-mile radius?

Mr. NASH. Well, right now I would settle for 125 miles an hour.

Mr. SKUBITZ. You were here when Congressman Eckhardt testified and gave his views on the Northeast Railroad Transportation Authority. Would you care to comment on Congressman Eckhardt's proposal?

Mr. NASH. I would rather not. I agree with him on certain things and I would have to disagree on others, but I am heartened by the fact that he is concerned and wants something done.

Mr. SKUBITZ. You do favor the imposition of a 1-percent transportation tax?

Mr. NASH. Yes, and strangely enough, I have talked with a lot of very large shippers on my railroad and that 1-percent transportation tax does not bother them one bit even though it may cost one a \$1 million charge a year.

Mr. SKUBITZ. You also do believe that the Government should take over the roadbeds, the major roadbeds in the northeast area?

Mr. NASH. Not only the roadbeds, but take over the yards, too.

Mr. SKUBITZ. Do you think it would be a good idea for the Government to take over all of the mainlines throughout the country on a leaseback proposition in order to get the roadbeds developed properly so we can have a decent rail transportation system across the whole country?

Mr. NASH. Well, I would not want to speak for my colleagues in the West.

Mr. SKUBITZ. I am asking for your opinion.

Mr. NASH. Some of them are doing pretty well. I think it would be most helpful, sir, if that were done, because in my experience over the years, we have been pretty heavily taxed on our right-of-ways in some States. We had school taxes on both sides of one single track, for instance, in two different school districts. This is behind us, but we

have this situation. I think this would be very helpful. I think it is very essential to our national security to have good, sound roadbeds and have them in good shape and this money can only come from the Federal Government.

Mr. SKUBITZ. My point is it is a choice between abandoning a line or keeping it going. If we can keep it going by relieving the railroads of the taxes that are assessed against them on some lines, the tax sometimes far out of line with what it should be, it should be done. Moreover, if we could maintain all of the roadbeds throughout the country, we would relieve and help the safety factor on transportation.

Mr. NASH. That is correct, sir.

Mr. SKUBITZ. And at the same time such a policy would relieve the railroads of some of their maintenance problems, and in their contracts with the labor unions. This might be quite helpful?

Mr. NASH. It could very well be. DOT dictates the safety standards on all railroads, right-of-way, and maintenance of equipment, and so on. It may very well be.

Mr. SKUBITZ. There are a number of additional questions I would like to ask, but time is not available. I must defer to my colleagues.

Mr. JARMAN. Mr. Podell.

Mr. PODELL. I want to thank the gentleman for his statement.

I would like to ask a general question or two. Would you feel that in the northeast section there is some duplication or overlapping because of the variety of railroads that exist?

Mr. NASH. Yes, sir.

Mr. PODELL. Would you feel there to be any benefit to the consolidation of the efforts of those railroads?

Mr. NASH. Yes, sir.

Mr. PODELL. You also point out so well in your statement, that only the railroad pays for its right-of-way while the airplane, the ship, and the car get a free ride. That the Government should at least pay for the rights-of-way, do you not feel that way?

Mr. NASH. Yes, but I would go a step further, if I may. I would also like to include in that the railroad yards, terminals. We can move a carload of traffic over the railroads pretty fast. Our main problem is in old yards, obsolete, they should be modernized and in this computer age we should have computer operations in our yards and unfortunately the railroads with their present financial condition cannot do that.

Mr. PODELL. I can well understand that. So you, therefore, agree that the Government should take over the rights-of-way, the yards, and some other additional facilities which you require if your operation got running.

Mr. NASH. Yes, sir.

Mr. PODELL. The only thing left for the railroad to do is to run the train really, isn't that right, and the reason I say that, I doubt very much that we are in, you know, disagreement, because I agree that we should consolidate the railroads in the northeast section because there is duplication and overlapping, and I think that the Government should take over the entire operation.

You are willing to give the Government everything but the operation of the trains, so there is truly not that great a distinction. I would like to ask you this question. Wasn't your line called the Black Diamond Line at one time?

Mr. NASH. Yes.

Mr. PODELL. That was because of the great amounts of anthracite coal?

Mr. NASH. Yes.

Mr. PODELL. I read something this morning about gasoline rationing in the newspapers. Do you feel that is going to substantially infuse dollars into your operation?

Mr. NASH. By all means. If we can go back to mining anthracite coal at half of the volume we used to have on our property, also we have tremendous reserves of anthracite coal and this could mean a lot to our railroad today in revenue.

Mr. PODELL. It is quite possible you fellows might have a turn-about situation if you have gasoline rationing?

Mr. NASH. That is what I meant in the statement.

Mr. PODELL. Well, we are under a quorum call and I would like to talk to you further, but I yield back, Mr. Chairman.

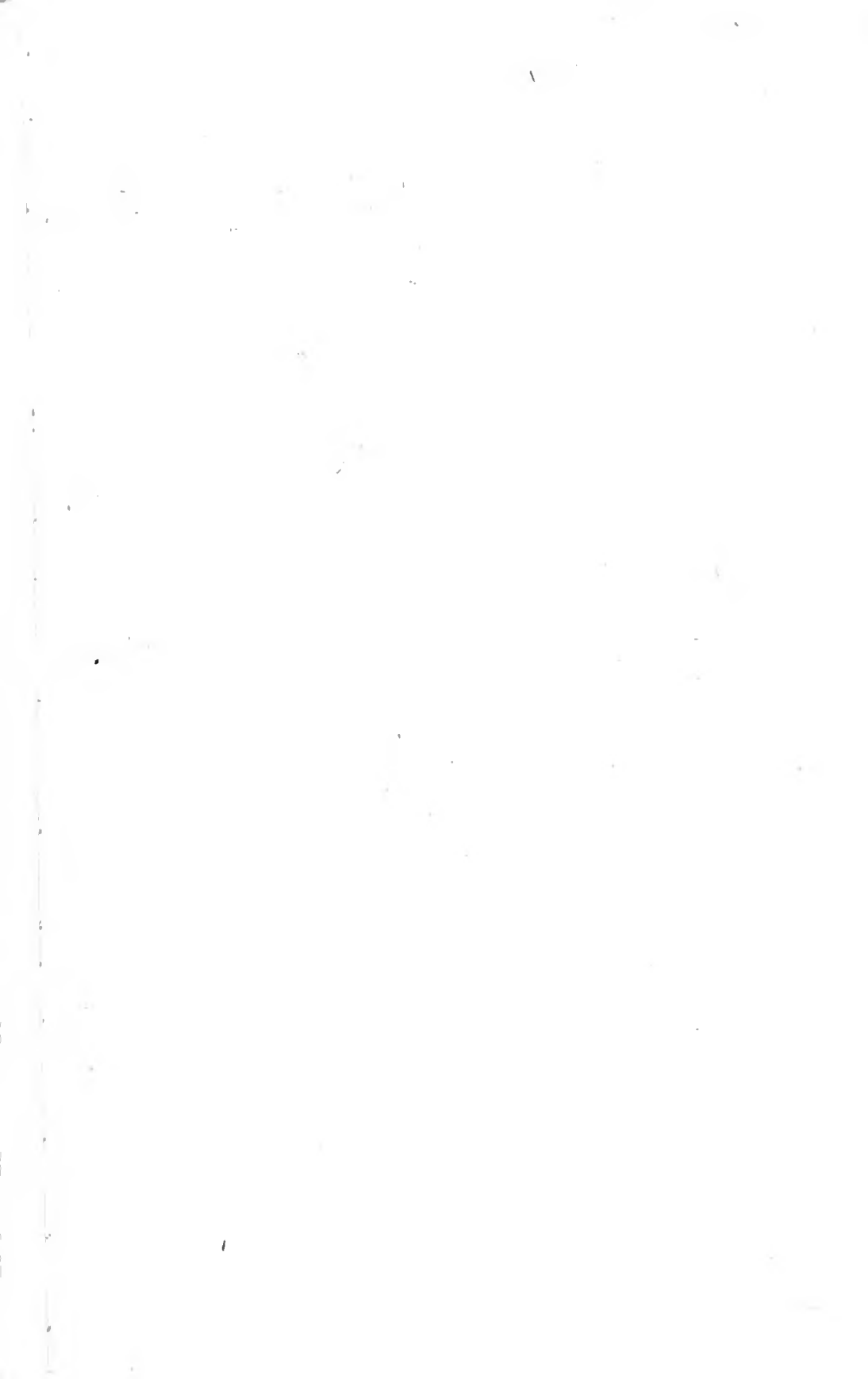
Mr. JARMAN. Mr. Nash, we very much appreciate your testimony. It was very helpful to our understanding of the problem and, as I indicated earlier, the subcommittee will welcome any additional recommendations you can make to us as we proceed along in the hearings.

Mr. NASH. I would like to make myself available for any answers to questions any time from the committee.

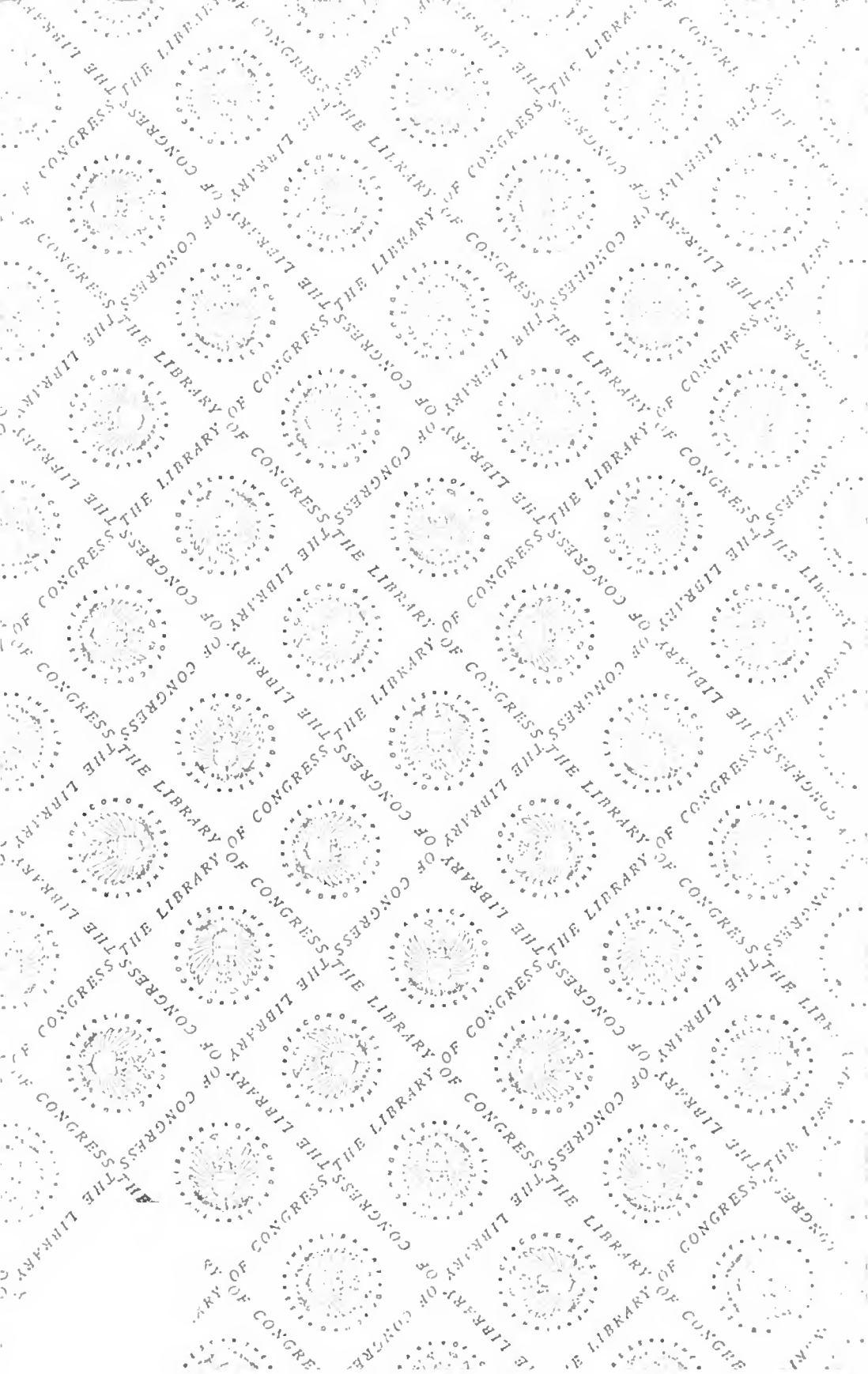
Mr. JARMAN. Thank you. The subcommittee stands adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 12:15 p.m. the subcommittee adjourned, to reconvene at 10 a.m., Thursday, May 10, 1973.]











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